

EXHIBIT 2
DEPOSITION OF DAN WATKINS

EXHIBIT 2

Deposition of:

Daniel R. Watkins, Esq.

FRCP 30(b)(6) Designee of Watkins & Letofsky, LLP

Case:

Amy Buchanan v. Watkins & Letofsky, LLP
2:19-CV-00226-GMN-VCF

Date:

02/20/2020



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<p>1 UNITED STATES DISTRICT COURT</p> <p>2 DISTRICT OF NEVADA</p> <p>3</p> <p>4 AMY BUCHANAN,) Case No.</p> <p>5 Plaintiff,) 2:19-cv-00226-GMN-VCF</p> <p>6 vs.)</p> <p>7 WATKINS & LETOFSKY, LLP, a)</p> <p>8 Nevada Limited-Liability)</p> <p>9 Partnership; DOES I-X; ROE)</p> <p>10 BUSINESS ENTITIES I-X,)</p> <p>11 Defendants.)</p> <p>12</p> <p>13 FRCP 30(b)(6) DEPOSITION OF WATKINS & LETOFSKY, LLP,</p> <p>14 THROUGH ITS REPRESENTATIVE DANIEL R. WATKINS, ESQ.</p> <p>15 Taken on February 20, 2020</p> <p>16 By a Certified Court Reporter</p> <p>17 At 11:18 a.m.</p> <p>18 At 7435 West Azure Drive, Suite 110</p> <p>19 Las Vegas, Nevada</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Reported by: Janet C. Trimmer, NV CCR 864, RPR, CRR</p> <p>25 Job No. 39325</p>	<p>1 INDEX OF EXAMINATION</p> <p>2</p> <p>3 WITNESS EXAMINATION PAGE</p> <p>4 DANIEL R. WATKINS, ESQ. BY MR. KEMP 5</p> <p>5 Afternoon Session 126</p> <p>6</p> <p>7 INDEX OF EXHIBITS</p> <p>8 NUMBER PAGE DESCRIPTION</p> <p>9 Exhibit 1 7 "Plaintiff's Notice of</p> <p>10 Deposition of Defendant Watkins</p> <p>11 & Letofsky, LLP, Pursuant to</p> <p>12 FRCP Rule 30(b)(6)"</p> <p>13 Exhibit 2 8 "First Amended Complaint"</p> <p>14 Exhibit 3 8 "Defendant Watkins & Letofsky,</p> <p>15 LLP's Answer to Plaintiff's</p> <p>16 First Amended Complaint"</p> <p>17 Exhibit 4 20 E-mail dated 4-29-16, subject:</p> <p>18 "Medical Update," WLLLP001299</p> <p>19 Exhibit 5 25 E-mail dated 6-28-16, subject:</p> <p>20 "My Resignation," WLLLP001301</p> <p>21 Exhibit 6 27 E-mail dated 8-18-16, subject:</p> <p>22 "Medical Leave," WLLLP001298</p> <p>23 Exhibit 7 28 E-mail string, top e-mail dated</p> <p>24 9-2-16, subject: "RE: Last Day</p> <p>25 Checklist," WLLLP001324 (2</p> <p>pages)</p> <p>Exhibit 8 44 E-mail dated 11-30-16,</p> <p>subject: "Tentative</p> <p>Schedule/Availability,"</p> <p>WLLLP001376</p> <p>Exhibit 9 46 E-mail string, top e-mail</p> <p>dated 11-30-16, subject:</p> <p>"RE: Tentative</p> <p>Schedule/Availability,"</p> <p>WLLLP001362 to WLLLP001363</p>
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<p>1 APPEARANCES:</p> <p>2</p> <p>3 For the Plaintiff:</p> <p>4 KEMP & KEMP</p> <p>5 BY: JAMES P. KEMP, ESQ.</p> <p>6 7435 West Azure Drive</p> <p>7 Suite 110</p> <p>8 Las Vegas, Nevada 89130</p> <p>9</p> <p>10 For the Defendant:</p> <p>11 WATKINS & LETOFSKY, LLP</p> <p>12 BY: JOSEPH M. ORTUNO, ESQ.</p> <p>13 8215 South Eastern Avenue</p> <p>14 Suite 265</p> <p>15 Las Vegas, Nevada 89123</p> <p>16</p> <p>17 Also Present:</p> <p>18 AMY BUCHANAN (entered at page 28.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 EXHIBITS (CONTINUED):</p> <p>2 NUMBER PAGE DESCRIPTION</p> <p>3 Exhibit 10 49 E-mail string, top e-mail dated</p> <p>4 12-14-16, subject: "RE: Amy</p> <p>5 Buchanan," WLLLP001311 to</p> <p>6 WLLLP001312</p> <p>7 Exhibit 11 56 E-mail string, top e-mail dated</p> <p>8 2-21-17, subject: "RE: Work</p> <p>9 Schedule," WLLLP001371</p> <p>10 Exhibit 12 64 E-mail string, top e-mail dated</p> <p>11 5-12-17, subject: "RE: Update</p> <p>12 for today," WLLLP001364 to</p> <p>13 WLLLP001370</p> <p>14 Exhibit 13 73 E-mail dated 6-28-17, subject:</p> <p>15 "Medical Update," WLLLP001300</p> <p>16 Exhibit 14 82 "Watkins & Letofsky, LLP Company</p> <p>17 Information," Plaintiff's 10129</p> <p>18 Exhibit 15 90 "Charge of Discrimination"</p> <p>19 Exhibit 16 96 Notes from Drs. McKinnon, Pfau,</p> <p>20 and Ziegler</p> <p>21 Exhibit 17 105 E-mail string, top e-mail dated</p> <p>22 8-17-17, subject: "RE: Medical</p> <p>23 Update," WLLLP001337 to</p> <p>24 WLLLP001339</p> <p>25 Exhibit 18 163 "New iMessage, to: Dan Watkins"</p> <p>Exhibit 19 168 E-mail string, top e-mail,</p> <p>subject: "Health Insurance and</p> <p>Outstanding Wages," WLLLP001291</p> <p>to WLLLP001292</p> <p>Exhibit 20 194 E-mail string, top e-mail dated</p> <p>9-1-17, subject: "Amy RE:</p> <p>Payroll Correction," WLLLP001285</p> <p>to WLLLP001286</p> <p>Exhibit 21 202 E-mail dated 7-8-17, subject:</p> <p>"Payroll Correction,"</p> <p>WLLLP001304 to WLLLP001305</p>

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<p>1 PROCEEDINGS</p> <p>2</p> <p>3 Whereupon --</p> <p>4 (In an off-the-record discussion held prior</p> <p>5 to the commencement of the proceedings, counsel agreed</p> <p>6 to waive the court reporter's requirements under Rule</p> <p>7 30(b)(5)(A) of the Federal Rules of Civil Procedure.)</p> <p>8</p> <p>9 DANIEL R. WATKINS, ESQ.</p> <p>10 having been first duly sworn to testify to the truth,</p> <p>11 was examined and testified as follows:</p> <p>12</p> <p>13 EXAMINATION</p> <p>14</p> <p>15 BY MR. KEMP:</p> <p>16 Q. Good morning. Would you please state your</p> <p>17 name and spell it for the record?</p> <p>18 A. Sure. Daniel Watkins, D-a-n-i-e-l</p> <p>19 W-a-t-k-i-n-s.</p> <p>20 Q. All right. Mr. Watkins, my name is JP Kemp.</p> <p>21 I represent Amy Buchanan in a case she has going on</p> <p>22 against Watkins & Letofsky, LLP.</p> <p>23 You have, of course -- you are an attorney;</p> <p>24 right?</p> <p>25 A. That's correct.</p>	<p>1 noticed as a Rule 30(b)(6) deposition. You've also</p> <p>2 been identified as somebody that has personal</p> <p>3 knowledge in the matter.</p> <p>4 So what I am going to do here in a moment, I</p> <p>5 will mark the deposition notice that has all of the</p> <p>6 topics. There are quite a few of them, but I think</p> <p>7 we'll go through them pretty quickly because they are</p> <p>8 fairly straightforward. I'll have some documents that</p> <p>9 we'll look at perhaps along the way or after we get</p> <p>10 through all the topics as well.</p> <p>11 We have water here. Again, if you need to</p> <p>12 take a break, just let me know. I do plan to take a</p> <p>13 short break around 2:15 to 2:30 to go pick up my son.</p> <p>14 It will be more like a lunch break at that point.</p> <p>15 A. Perfect.</p> <p>16 MR. KEMP: Okay. All right. So let's go</p> <p>17 ahead and make this Exhibit 1.</p> <p>18 (Exhibit 1 was marked for identification.)</p> <p>19 MR. KEMP: So Exhibit 1 is the plaintiff's</p> <p>20 notice of deposition of defendant, Watkins & Letofsky.</p> <p>21 I believe -- actually, this was the one that we were</p> <p>22 starting at 9:30. There may have been an amended one.</p> <p>23 The only change on it was that it would change to</p> <p>24 11:00 for the start time; otherwise it's all the same</p> <p>25 information.</p>
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<p>1 Q. You are familiar with the deposition process?</p> <p>2 A. I am.</p> <p>3 Q. We probably don't need to go through all the</p> <p>4 rules and admonitions, do we?</p> <p>5 A. No. But I can't guarantee I won't step on</p> <p>6 your question with an answer, so you might have to</p> <p>7 remind me.</p> <p>8 Q. That's fine. That's natural. That happens.</p> <p>9 We'll deal with that as we go.</p> <p>10 A. Sure.</p> <p>11 Q. Will you want the opportunity to review the</p> <p>12 transcript to check it for accuracy?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And you understand the rules that if</p> <p>15 you make changes, those could -- if there were</p> <p>16 substantive changes, those could reflect on your</p> <p>17 credibility in the future?</p> <p>18 A. Sure.</p> <p>19 Q. Okay. All right. And then, one of the other</p> <p>20 things is, if you need to take a break, just let me</p> <p>21 know.</p> <p>22 A. Will do. Thank you.</p> <p>23 Q. If we have a question pending, we'll need an</p> <p>24 answer, but we'll take a break as soon as we can.</p> <p>25 So we are here today, this has actually been</p>	<p>1 While we're at it, let's mark Exhibit</p> <p>2 Number 2.</p> <p>3 (Exhibit 2 was marked for identification.)</p> <p>4 MR. KEMP: And Exhibit 2 is the first amended</p> <p>5 complaint that was filed on March 1st, 2019.</p> <p>6 And let's go ahead and mark this one as</p> <p>7 Exhibit 3.</p> <p>8 (Exhibit 3 was marked for identification.)</p> <p>9 MR. KEMP: And Exhibit 3 will be the</p> <p>10 defendant, Watkins & Letofsky, LLP's answer to the</p> <p>11 plaintiff's first amended complaint that was filed on</p> <p>12 August 27, 2019.</p> <p>13 Q. Okay. So, Mr. Watkins, with reference to</p> <p>14 Exhibit 1, have you had a chance to look through the</p> <p>15 notice of deposition, all the topics that we're here</p> <p>16 to talk about today?</p> <p>17 A. I did.</p> <p>18 Q. And are you able to answer questions on</p> <p>19 behalf of the defendant on all of those topics?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Let's more or less go through in the</p> <p>22 order that we have them. We might skip around a bit,</p> <p>23 but I'm going to start with number 1.</p> <p>24 Do you have -- at Watkins & Letofsky, LLP, do</p> <p>25 you have any specific personnel policies or procedures</p>

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<p>1 with respect to providing accommodations based on</p> <p>2 disability?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And what are those policies? Can you</p> <p>5 outline for us --</p> <p>6 A. Primarily we have posting in the office</p> <p>7 provided by our payroll company that highlights the</p> <p>8 laws in the State of Nevada related to discrimination.</p> <p>9 We also have an employee manual that touches</p> <p>10 on discrimination in a general sense. I don't believe</p> <p>11 it really speaks to accommodations or disability</p> <p>12 discrimination in any specific way.</p> <p>13 We have a standard operating procedure that</p> <p>14 we have for the associates and the staff. I don't</p> <p>15 believe that that -- it speaks to policies and</p> <p>16 procedures and it speaks to addressing issues with</p> <p>17 supervisors, so to that extent it would deal with it.</p> <p>18 Those would be the main things that come to</p> <p>19 mind.</p> <p>20 Q. Okay. And with respect to how you operate</p> <p>21 under the policies and procedures, if you have</p> <p>22 someone -- we can use Ms. Buchanan as an example. If</p> <p>23 you have someone who comes to you and says that they</p> <p>24 are having some sort of a problem with a health</p> <p>25 condition or a disability, what is your standard</p>	<p>1 something that was going on in life that was impacting</p> <p>2 their ability to work, we would proceed that way.</p> <p>3 Q. Okay. And have these been your policies and</p> <p>4 procedures, the way that you operate for the time</p> <p>5 period that's indicated here on the second page,</p> <p>6 January 1st, 2016, to the present?</p> <p>7 A. Yes.</p> <p>8 Q. With respect to -- we'll kind of jump ahead a</p> <p>9 little bit because we're going to talk about</p> <p>10 Ms. Buchanan specifically.</p> <p>11 With respect to Ms. Buchanan, at some point</p> <p>12 did she come to you and say she was having difficulty</p> <p>13 or she had a disability that was impacting her ability</p> <p>14 to work?</p> <p>15 A. Yes.</p> <p>16 Q. Do you remember when that was?</p> <p>17 A. Not specifically, but it was as soon as we</p> <p>18 hire -- I mean, as early as her hire date, initial</p> <p>19 hire date she had informed me of an automobile</p> <p>20 accident that had happened previously, several months</p> <p>21 even, maybe, before, she was receiving treatment for</p> <p>22 that in follow-up. So she had indicated right out of</p> <p>23 the gate that she had issues related to that, medical</p> <p>24 issues.</p> <p>25 Q. And I think it was specifically she was</p>
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<p>1 practice in dealing with that?</p> <p>2 A. Well, that's two different things, a health</p> <p>3 condition and a disability. I should also add,</p> <p>4 though, that within the phrase "policies and</p> <p>5 procedures" I would include verbal communications back</p> <p>6 and forth with the employee regarding whatever issues</p> <p>7 are presented and addressing it that way.</p> <p>8 Q. Okay.</p> <p>9 A. But in response to a statement from an</p> <p>10 employee in a general sense that they have a</p> <p>11 disability, we would ask if they need an</p> <p>12 accommodation, and then we would seek to obtain</p> <p>13 information from a medical provider on the nature and</p> <p>14 extent of the accommodation necessary and the length</p> <p>15 of time that it would extend as a starting point.</p> <p>16 Q. Okay. And do you try and stay -- if somebody</p> <p>17 doesn't use the specific word disability but they say,</p> <p>18 you know, I'm not feeling well or I'm not able to</p> <p>19 walk, or give you some information that might indicate</p> <p>20 they have a disability, do you handle that basically</p> <p>21 the same way?</p> <p>22 A. Sure. I mean, in a very general sense that's</p> <p>23 a limited scenario, but yeah, if someone came to me</p> <p>24 and indicated that their ability to perform work was</p> <p>25 impacted by some medical condition, or they had</p>	<p>1 having issues with her back, like a back injury from</p> <p>2 the auto accident; is that right?</p> <p>3 A. So back, headaches, migraines, focus,</p> <p>4 concentration -- what's the word I'm looking for? --</p> <p>5 fatigue, things like that we discussed early on.</p> <p>6 Q. Okay.</p> <p>7 A. But it wasn't discussed in any -- well, to</p> <p>8 answer your question in terms of the disability, we</p> <p>9 did talk about those things, but there was nothing</p> <p>10 indicated by her that she needed an accommodation at</p> <p>11 that time. She went to work for us initially</p> <p>12 full-time and performed that role for several months.</p> <p>13 Q. And I have it from the complaint here that</p> <p>14 she started in about April 2016. Does that sound</p> <p>15 right?</p> <p>16 A. 2016, I think so. I don't have any documents</p> <p>17 in front of me, but yes. I'll go from the complaint.</p> <p>18 That's accurate.</p> <p>19 Q. Okay. I'll have some other documents we can</p> <p>20 look at.</p> <p>21 A. Sure.</p> <p>22 Q. All right. So pretty much from the time that</p> <p>23 she started -- so had she had -- do you remember, did</p> <p>24 she have the car accident prior to when you first</p> <p>25 hired her, when you interviewed her? Did she let you</p>

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<p>1 know about that?</p> <p>2 A. I don't know if it was during the interview.</p> <p>3 I don't believe it was in that context. I don't</p> <p>4 recall the specific time when it came up. I just</p> <p>5 remember that it was an issue for her. She was</p> <p>6 recovering from that. I'm pretty sure it was before</p> <p>7 she started for us the first time that we had that</p> <p>8 discussion that she had the accident.</p> <p>9 Q. I understand, when she first actually came to</p> <p>10 work for you, she was kind of working by herself in</p> <p>11 your office here in Las Vegas. Is that right?</p> <p>12 A. She was physically here, yes, and then I was</p> <p>13 working with her. I was here quite a bit during that</p> <p>14 time. So I was here and then Brian Letofsky was here.</p> <p>15 Q. Okay. Let's get a little bit more background</p> <p>16 before we go through the topics any more.</p> <p>17 So your firm, you started in California; is</p> <p>18 that right?</p> <p>19 A. No. The defendant here, Watkins & Letofsky,</p> <p>20 LLP, A Nevada Limited Liability Partnership, started</p> <p>21 here.</p> <p>22 Q. I see. Okay. But did that grow out of your</p> <p>23 operations in California?</p> <p>24 A. No. It's an independent office that Brian</p> <p>25 and I started here after we took the bar and passed</p>	<p>1 would those be?</p> <p>2 A. Watkins & Letofsky, LLP, a California Limited</p> <p>3 Liability Partnership.</p> <p>4 Q. Okay. Any others?</p> <p>5 A. No.</p> <p>6 Q. Okay. And are you licensed or practice in</p> <p>7 any states other than California and Nevada?</p> <p>8 A. No.</p> <p>9 Q. Okay. When did you open an office here in</p> <p>10 Nevada with Watkins & Letofsky, LLP, Nevada?</p> <p>11 A. It wasn't a subject on this (indicating), and</p> <p>12 I realized this morning as I went through this, I</p> <p>13 didn't go back and put that timeline together.</p> <p>14 It would have been right when I passed the</p> <p>15 bar, shortly after that. And Brian and I passed at</p> <p>16 the same time. Our bar numbers are 11 -- mine is</p> <p>17 11881, so we could figure out the specific time from</p> <p>18 that. But I'm guessing, if I had to piece it</p> <p>19 together, it's probably been 10 to 15 years.</p> <p>20 But I don't mean to be vague. Just,</p> <p>21 honestly, time, it gets super-foggy going back that</p> <p>22 far. So I'm saying 10 to 15 years, if that's okay.</p> <p>23 We can get you specifics later, if we need to. It</p> <p>24 just wasn't on the subject list, so I didn't even</p> <p>25 focus on it.</p>
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<p>1 it.</p> <p>2 Q. Okay. Is there any -- in terms of the</p> <p>3 operations of the law firm, do you and Mr. Letofsky</p> <p>4 actually do work for your Nevada cases from your</p> <p>5 California office?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 A. I mean, we do it remotely from all over the</p> <p>9 place, so there, my home, if I'm in San Francisco on</p> <p>10 another case, that, if I'm in Reno. But yes, we work</p> <p>11 on our Nevada stuff remotely all the time.</p> <p>12 Q. Okay. Do you have any other limited</p> <p>13 liability partnerships other than this Nevada limited</p> <p>14 liability partnership that you practice law through?</p> <p>15 A. So I'm not trying to play with you, but I'm</p> <p>16 trying to understand what you are asking me.</p> <p>17 So as a PMK for this defendant, this</p> <p>18 defendant is not a limited liability partner in any</p> <p>19 other limited liability partnerships. Is that what</p> <p>20 you are asking?</p> <p>21 Q. I understand. I was asking, you know, if you</p> <p>22 personally, by way of your background, information, do</p> <p>23 you have any other entities --</p> <p>24 A. I do.</p> <p>25 Q. -- through which you practice law? What</p>	<p>1 Q. Okay. So you've had an office, though, here</p> <p>2 in Nevada for that whole period of time?</p> <p>3 A. We had -- yes, we had a physical location</p> <p>4 initially subleased from Sean Sullivan PC for a period</p> <p>5 of time, and I don't know how long that was. And then</p> <p>6 we moved to our current building in a different suite,</p> <p>7 and then we moved into our current suite in the same</p> <p>8 building at 8215 South Eastern.</p> <p>9 Q. Okay. So other than yourself and</p> <p>10 Mr. Letofsky passing the bar here, how long have you</p> <p>11 had employees in Nevada? The whole time you've had</p> <p>12 employees at various times?</p> <p>13 A. No, not the whole time. Well, Amy, she can</p> <p>14 and would have been our first employee. So April of</p> <p>15 2016. So as I think about that, that would make me</p> <p>16 think we probably passed the bar about 10 years ago.</p> <p>17 Q. Okay. All right.</p> <p>18 A. I'm just making sure of that. I don't mean</p> <p>19 to be vague, but I didn't really research that. Did</p> <p>20 we have someone else? I don't think so. Amy Buchanan</p> <p>21 would have been the first employee.</p> <p>22 Q. That doesn't surprise me. I mean, she said</p> <p>23 she was the only -- I think she said in this case she</p> <p>24 was the only person working in the Las Vegas office</p> <p>25 when she first started.</p>

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<p>1 A. Right.</p> <p>2 Q. In terms of being there --</p> <p>3 A. Physically.</p> <p>4 Q. -- all the time day to day -- right.</p> <p>5 A. I was just trying to think, when we were at</p> <p>6 Mr. Sullivan's office, whether we had anyone that did</p> <p>7 work for us there. I think we had engaged in having</p> <p>8 runners go to and from the court and things of that</p> <p>9 nature, but those would have been outside agencies.</p> <p>10 So I don't think they were employees.</p> <p>11 Q. Okay.</p> <p>12 A. (Document review.) I'm sorry. Mr. Ortuno is</p> <p>13 showing me that we passed the bar in December of 2010,</p> <p>14 so that's 10 years, and then it would have taken</p> <p>15 several months before we were working through</p> <p>16 Mr. Sullivan. Somewhere in that time frame we would</p> <p>17 have started.</p> <p>18 Q. Okay. So going on 10 years, then?</p> <p>19 A. Right. We had to set up the LLP and register</p> <p>20 with the State and do all of that stuff.</p> <p>21 Q. Okay. So could you tell me a little bit of</p> <p>22 the process you went through to hire Amy as your first</p> <p>23 employee here. Did you advertise for it? How did she</p> <p>24 come to meet up with you and go to work with you?</p> <p>25 A. So I didn't research that because it's not in</p>	<p>1 word of mouth as opposed to like responding to Craig's</p> <p>2 List.</p> <p>3 Q. Okay. And so did you get a resume from her?</p> <p>4 Interview her? What was the process?</p> <p>5 A. I did get a resume; we did interview her,</p> <p>6 spoke at length.</p> <p>7 Q. Was that both you and Mr. Letofsky, or just</p> <p>8 you?</p> <p>9 A. I don't recall that. Certainly I was</p> <p>10 involved. I don't remember if Mr. Letofsky was</p> <p>11 involved. He probably spoke to her at different times</p> <p>12 on the phone, but I don't -- I was no party to that.</p> <p>13 Q. Okay. And so what was Amy hired to do? What</p> <p>14 was the need that you had that she came in to fill?</p> <p>15 A. Be an associate attorney.</p> <p>16 Q. All right. And to work on what kind of</p> <p>17 cases?</p> <p>18 A. (Telephonic noise interruption.) Sorry.</p> <p>19 Q. If you need to get that, we can take a break.</p> <p>20 That's fine.</p> <p>21 A. No. Thank you, but no.</p> <p>22 Well, at that point, whatever we could get.</p> <p>23 We were trying to establish a beachhead. We had some</p> <p>24 employment law cases that were coming in through</p> <p>25 Firevaugh (phonetic). We were marketing that way.</p>
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<p>1 here in the notice, but if memory serves, it would</p> <p>2 have probably started through a Craig's List ad. I</p> <p>3 asked Mr. Sullivan, who is very connected in the</p> <p>4 community. He's born and raised here. His wife is a</p> <p>5 judge. So I touched base with them. I know another</p> <p>6 judge, Cedric -- I know him through Mr. Sullivan.</p> <p>7 Q. Kerns?</p> <p>8 A. -- Kerns. And Sean Sullivan had reached out</p> <p>9 to him just to see if we knew of any attorneys that</p> <p>10 were looking. I didn't have a ton of exposure to</p> <p>11 attorneys here at that time, but any that I knew on</p> <p>12 the other side of whatever case we were in, I asked if</p> <p>13 they knew people.</p> <p>14 We didn't do any sophisticated Monster, I</p> <p>15 think that's what it's called, or Zip recruiting,</p> <p>16 anything like that, because we were just trying to</p> <p>17 find someone through word of mouth. The market was</p> <p>18 pretty bare at that time in terms of available</p> <p>19 attorneys, from what I can recall.</p> <p>20 Q. Okay. And so how did you end up meeting Amy?</p> <p>21 Do you remember if somebody referred her to you or did</p> <p>22 she answer an ad or do you recall?</p> <p>23 A. I don't. She mentioned somebody at the</p> <p>24 deposition. I'm embarrassed to say that I didn't</p> <p>25 remember that. But I'll take her word that it was</p>	<p>1 And we wanted to develop a family law practice to the</p> <p>2 extent that we could find the right fit.</p> <p>3 So Ms. Buchanan offered an opportunity</p> <p>4 potentially to grow that because of her background in</p> <p>5 family law, though it was limited, but she still had</p> <p>6 exposure and a desire. So it seemed like that might</p> <p>7 work.</p> <p>8 So there was initially the thought of</p> <p>9 establishing kind of ground floor work through</p> <p>10 employment and through family law.</p> <p>11 Q. Okay. And so with respect to her -- you said</p> <p>12 it was soon after she started that she told you she</p> <p>13 was having like problems with her back and the</p> <p>14 headaches and concentration, focus, like that; right?</p> <p>15 A. Yes. It's not in the context of work. Just</p> <p>16 in the context of life. But yes. That's my memory</p> <p>17 anyway.</p> <p>18 MR. KEMP: Okay. Let's make this Exhibit 4.</p> <p>19 (Exhibit 4 was marked for identification.)</p> <p>20 BY MR. KEMP:</p> <p>21 Q. Exhibit 4 has got the defendant's Bates stamp</p> <p>22 number ending in 1299, appears to be an April 29th,</p> <p>23 2016, e-mail from Ms. Buchanan to you and</p> <p>24 Mr. Letofsky, subject "Medical Update."</p> <p>25 Do you have any recollection of receiving</p>

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<p>1 this e-mail?</p> <p>2 A. No, not particularly.</p> <p>3 Q. Okay. But it appears that she's letting you</p> <p>4 know that she's got medical treatments and</p> <p>5 appointments coming up; right?</p> <p>6 A. Right. The subject of this e-mail would be</p> <p>7 consistent with what I remember about our</p> <p>8 conversations, which was that she was going to need</p> <p>9 flexibility in work to be able to attend to those</p> <p>10 things.</p> <p>11 Q. Okay. So just to get to the point, early on</p> <p>12 in the employment relationship she was letting you</p> <p>13 know that she had these medical issues; right?</p> <p>14 A. Right. When you say "issues," what do you</p> <p>15 mean?</p> <p>16 Q. Well, that she was having issues where she</p> <p>17 was needing to go for medical treatment and see</p> <p>18 neurologists and have time off potentially to go</p> <p>19 and --</p> <p>20 A. Correct.</p> <p>21 Q. -- schedule around her medical appointments.</p> <p>22 A. Correct.</p> <p>23 Q. Okay. How was Amy's work performance while</p> <p>24 she worked for your firm? That's kind of a broad --</p> <p>25 if it's different at different times, I mean, I'm just</p>	<p>1 of time.</p> <p>2 Q. What would you define the first segment of</p> <p>3 time? From April when she started until...</p> <p>4 A. Whenever she quit the first time.</p> <p>5 Q. She resigned, I think it was September.</p> <p>6 A. September, right.</p> <p>7 Q. 16th.</p> <p>8 A. Yeah. So during that time, I think she</p> <p>9 really wanted to work hard and be good and she had a</p> <p>10 desire to use her degree and she was extremely</p> <p>11 frustrated by the impact of that accident on her</p> <p>12 ability to do that, to live life. It was impacting</p> <p>13 her in terms of medical insurance, medical treatment,</p> <p>14 and she was extremely frustrated by that.</p> <p>15 So we talked a lot about that and how to try</p> <p>16 and manage that in the context of a tough profession</p> <p>17 and learning in the beginning stages of a tough</p> <p>18 profession. So we talked a lot about that.</p> <p>19 But I was always impressed. She wanted to</p> <p>20 try and be good, and she did try to implement things.</p> <p>21 She just had limitations. Some days she just couldn't</p> <p>22 put in a full day. So that's how it went.</p> <p>23 But the quality of her work was the quality</p> <p>24 of a very young associate. So we reviewed everything,</p> <p>25 I went over all of her work product, I reviewed it and</p>
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<p>1 trying to get an overall sense of what you thought of</p> <p>2 her work performance.</p> <p>3 A. I don't know that I can answer that question</p> <p>4 in terms of an overall sense of it because the time</p> <p>5 varied over a year or more and -- but she was very</p> <p>6 green, a very young associate, and we knew that going</p> <p>7 in and she knew that when she started.</p> <p>8 I didn't think she lacked any desire to be a</p> <p>9 good attorney. I thought she had quite a bit of drive</p> <p>10 and desire to do that, and I was impressed by that. I</p> <p>11 think she had a desire to learn, although she did not</p> <p>12 know anything about civil litigation really at all.</p> <p>13 But she did have a desire to learn. She</p> <p>14 utilizes the resources. We talked a lot. She</p> <p>15 implemented as best she could the things that we</p> <p>16 talked about in terms of how to practice law and</p> <p>17 manage files, and so in that sense, I think that was</p> <p>18 my general observation out of the gate; that's why we</p> <p>19 hired her.</p> <p>20 As time went by she struggled, like most</p> <p>21 young associates. It's extremely difficult and it's a</p> <p>22 stressful job. And her progress, being out here</p> <p>23 alone, you know, in terms of expectations, that she</p> <p>24 was fine with how she did things. I didn't have any</p> <p>25 real issues in that regard during this first segment</p>	<p>1 corrected it, and tried to help her maneuver correctly</p> <p>2 to become better.</p> <p>3 But overall I had a good impression of</p> <p>4 Ms. Buchanan. I never really thought anything</p> <p>5 negative about her.</p> <p>6 Q. Okay. I think the court reporter had an</p> <p>7 issue, she might have missed something.</p> <p>8 The period of time was April through</p> <p>9 September of 2016, that's the first period that she</p> <p>10 worked for you; right?</p> <p>11 A. Yes.</p> <p>12 THE REPORTER: It's just more the overlap.</p> <p>13 THE WITNESS: I'll try to stop.</p> <p>14 BY MR. KEMP:</p> <p>15 Q. I'm bad at that too.</p> <p>16 So was there ever any speaking -- I guess,</p> <p>17 let's talk about the first time period up until</p> <p>18 September of 2016 when she did resign because of her</p> <p>19 health issues. Did you ever have to issue her any</p> <p>20 warnings or discipline of any kind for anything that</p> <p>21 she did?</p> <p>22 A. If you mean by warning -- I don't want to</p> <p>23 play with words because there's a lot of constructive</p> <p>24 criticism and feedback on her work product, but if by</p> <p>25 warnings and discipline you mean did I have to tell</p>

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<p>1 her that she's doing something very wrong and in</p> <p>2 violation of company policy and that can't be</p> <p>3 tolerated, I don't recall any of that.</p> <p>4 Q. Okay. So the first time that she stopped</p> <p>5 working for you, September of 2016, what do you recall</p> <p>6 about what happened there?</p> <p>7 A. She just was extremely frustrated with the</p> <p>8 impact of her medical condition on her ability to</p> <p>9 work, and she decided that she needed to address that,</p> <p>10 the issue, go get care and see what she could do to</p> <p>11 fix it so she could get back and contribute as an</p> <p>12 associate, you know, learning. I don't know if it was</p> <p>13 so much -- I don't know what her motivation was behind</p> <p>14 that, but she decided she needed to leave work to go</p> <p>15 and address those issues.</p> <p>16 MR. KEMP: Okay. We'll make this -- I think</p> <p>17 this will be Exhibit 5.</p> <p>18 (Exhibit 5 was marked for identification.)</p> <p>19 MR. KEMP: Exhibit 5, we have a -- it's a</p> <p>20 one-page document. It's got defendant's Bates stamp</p> <p>21 ending in 1301, Tuesday, 28 June 2016, e-mail from</p> <p>22 Amy Buchanan to Dan Watkins, subject "My Resignation."</p> <p>23 Q. First of all, do you recall receiving this</p> <p>24 e-mail?</p> <p>25 A. No. I don't deny that it came. I just don't</p>	<p>1 through these next couple of exhibits also. This will</p> <p>2 be Exhibit 6.</p> <p>3 (Exhibit 6 was marked for identification.)</p> <p>4 MR. KEMP: Exhibit 6 is a one-page document</p> <p>5 that ends in defendant's Bates stamp 1298 from</p> <p>6 Amy Buchanan, e-mail to Dan Watkins and Brian Letofsky</p> <p>7 dated Thursday, August 18th, 2016.</p> <p>8 Q. Take a look at that and let me know if you</p> <p>9 remember receiving this.</p> <p>10 A. I do. I don't recall reading and receiving</p> <p>11 this e-mail, I don't recall it coming up on my</p> <p>12 computer, but I recall the subject of the e-mail.</p> <p>13 Q. Okay. This is talking about having to have</p> <p>14 another back surgery and...</p> <p>15 A. Correct. And I remember there were issues</p> <p>16 with -- and I can't put it together as I'm sitting</p> <p>17 here, but there were some issues from her perspective</p> <p>18 of needing to not work to have her insurance in place.</p> <p>19 I don't know if that -- what that was necessarily</p> <p>20 related to.</p> <p>21 But I do recall, as she mentions in that</p> <p>22 second line, that in order to keep my current</p> <p>23 insurance coverage, keep out-of-pocket costs to a</p> <p>24 minimum, and have surgery done in a reasonable time,</p> <p>25 she needs to go now, between August and September.</p>
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<p>1 recall it.</p> <p>2 Q. Okay. Well, I'm not trying to trick you or</p> <p>3 anything. That's why I wanted to make sure I showed</p> <p>4 you this, because I know I've seen the -- and we'll</p> <p>5 look at the resignation letter from -- it's dated, I</p> <p>6 think, September 2nd. But this is all the way back at</p> <p>7 the end of June she was talking about needing to</p> <p>8 resign. I just wanted to see if that jogged your</p> <p>9 memory about any earlier conversations that you had</p> <p>10 with her about her needing to resign or wanting to</p> <p>11 resign.</p> <p>12 A. No, not specifically with respect to this</p> <p>13 e-mail, but we did -- like I said, we talked a lot</p> <p>14 about her frustration with her current medical</p> <p>15 condition and practicing law and just the strain and</p> <p>16 stress of practicing law in the midst of dealing with</p> <p>17 that, but I don't recall this particular e-mail, not</p> <p>18 from June.</p> <p>19 Q. Okay. Do you recall there being</p> <p>20 conversations, communications about her resigning?</p> <p>21 This would have been a little over two months before</p> <p>22 she actually did it.</p> <p>23 A. I don't recall that, no, not in that context,</p> <p>24 not the word "resigned." I don't recall that.</p> <p>25 MR. KEMP: Okay. So we catch up, let's go</p>	<p>1 So I remember that and the timing was</p> <p>2 important for her with respect to insurance, but</p> <p>3 ultimately the goal was to go and have surgery and get</p> <p>4 better. So I do recall that.</p> <p>5 MR. KEMP: Okay. All right. The next one,</p> <p>6 Exhibit 7.</p> <p>7 (Exhibit 7 was marked for identification.)</p> <p>8 (Amy Buchanan entered the proceedings.)</p> <p>9 MR. KEMP: Exhibit 7, we have two pages.</p> <p>10 Q. And I'll tell you, the second page of the</p> <p>11 letter doesn't have a Bates stamp on it because I</p> <p>12 couldn't find the actual copy of the letter that was</p> <p>13 attached to this Friday, September 2nd, 2016, e-mail.</p> <p>14 But this second page does appear to be the</p> <p>15 resignation later that Amy sent you; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. So September 2nd she resigns to go and</p> <p>18 pursue her medical treatment, particularly apparently</p> <p>19 a back surgery.</p> <p>20 What did you do with respect to running the</p> <p>21 office when she left? Did you have somebody else</p> <p>22 working there by that time at the Las Vegas office?</p> <p>23 A. Yeah, if memory serves, Eran Forster.</p> <p>24 Q. Could you spell the last name?</p> <p>25 A. F-o-r-s-t-e-r.</p>

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<p>1 Q. I think it's spelled E-r-a-n, the first name.</p> <p>2 A. Eran, E-r-a-n, yes.</p> <p>3 Q. Okay. And when did Eran Forster come to work</p> <p>4 for you?</p> <p>5 A. I don't mean to be evasive, but it wasn't in</p> <p>6 here, I didn't really focus on this, and so I didn't</p> <p>7 research his hire date and all that stuff.</p> <p>8 Q. Okay.</p> <p>9 A. If he wasn't there when she left, when</p> <p>10 Ms. Buchanan left, it was shortly after that, and I</p> <p>11 would have tried to manage things as best I could, but</p> <p>12 it seems like I remember him being there before that.</p> <p>13 Q. She was the first person that you hired in</p> <p>14 April -- I'm just trying to see if we can narrow it</p> <p>15 down.</p> <p>16 If she was hired in April and resigns in</p> <p>17 September, that's just about a five-month period,</p> <p>18 four- or five-month period. Does that help you narrow</p> <p>19 it down when Eran Forster might have come to work?</p> <p>20 A. No. I just don't remember a time when we</p> <p>21 didn't have anybody here working on the files. I do</p> <p>22 recall Mr. Forster coming to our attention through</p> <p>23 Ms. Buchanan, I think that's right, and we were</p> <p>24 slammed busy. So if my memory serves, that he was</p> <p>25 there when she was -- by this time, because I don't</p>	<p>1 Nevada, so she does work for Nevada, not as an</p> <p>2 employee, but she does do the books here too.</p> <p>3 Q. Okay. And Nancy Letofsky, is that</p> <p>4 Mr. Letofsky's wife?</p> <p>5 A. Correct. She performs the role of office</p> <p>6 manager and paralegal in California and office</p> <p>7 manager -- well, for a period of time she was the</p> <p>8 office manager for here in Nevada.</p> <p>9 Q. Okay.</p> <p>10 A. She doesn't play that role anymore.</p> <p>11 Q. Do you have somebody else that plays that</p> <p>12 role now?</p> <p>13 A. Yes, Farah Kachermeyer.</p> <p>14 Q. Okay. Can you spell --</p> <p>15 A. K-a-c-h-e-r-m-e-y-e-r.</p> <p>16 Q. And Farrah, F-a-r-r-a-h?</p> <p>17 A. F-a-r-a-h, uh-huh.</p> <p>18 Q. Okay. All right. So it looks like the</p> <p>19 e-mail from Nancy Letofsky is Wednesday, August 31st,</p> <p>20 2016, and it says:</p> <p>21 "Hi, Amy. We will need a letter of</p> <p>22 resignation from you, see attached</p> <p>23 information sheet. We hope your surgery is</p> <p>24 successful and your recovery goes well. What</p> <p>25 day are you having surgery? Nancy."</p>
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<p>1 remember not having anyone.</p> <p>2 Q. Okay. Was there anybody besides Mr. Forster</p> <p>3 and Amy Buchanan working there prior to when she</p> <p>4 resigns with this letter of September 2nd?</p> <p>5 A. Myself and Mr. Letofsky.</p> <p>6 Q. Okay. No other --</p> <p>7 A. No other attorneys, no.</p> <p>8 Q. Any other support staff?</p> <p>9 A. No, I don't believe so, not by September.</p> <p>10 Q. Was any of the support staff out of</p> <p>11 California working on any of the Nevada files?</p> <p>12 A. I don't think so because it's a federal</p> <p>13 system out here, and we don't do much in federal court</p> <p>14 there. I don't recall that. Most of the attorneys</p> <p>15 are dictating or typing, so I don't remember having</p> <p>16 support that way. I'm sure there were occasions where</p> <p>17 depositions might have been set through somebody there, but</p> <p>18 I don't recall that specifically.</p> <p>19 Q. Okay. So also in Exhibit 7 there appears to</p> <p>20 be an e-mail from Nancy Letofsky to Amy Buchanan with</p> <p>21 a CC to Susan Watkins. Is Susan Watkins your wife?</p> <p>22 A. Yes.</p> <p>23 Q. And does she work for your firm?</p> <p>24 A. Yes, she currently does, in California. She</p> <p>25 does not work for -- well, she does the books for</p>	<p>1 So obviously, there must have been some other</p> <p>2 communication about the resignation and she was asking</p> <p>3 you to receive this resignation letter?</p> <p>4 MR. ORTUNO: Objection. Calls for</p> <p>5 speculation. Calls for personal knowledge.</p> <p>6 THE WITNESS: Yeah, I don't know what you</p> <p>7 mean by "communication."</p> <p>8 BY MR. KEMP:</p> <p>9 Q. Well, I would just indicate that there had</p> <p>10 been some other discussion. Well, let me ask you this</p> <p>11 way:</p> <p>12 Do you know if there was some other</p> <p>13 discussion about Amy resigning as of September 2nd</p> <p>14 that would have led to Nancy sending this e-mail?</p> <p>15 A. I'm not sure this is the first e-mail of this</p> <p>16 chain, but -- so I don't know, no.</p> <p>17 Q. Okay. Did you have any discussions with</p> <p>18 Nancy or Susan about Amy's resignation?</p> <p>19 A. Only that she had resigned. That's all I</p> <p>20 recall.</p> <p>21 Q. Okay.</p> <p>22 A. And that she was going to resign. I'm sure</p> <p>23 we were discussing it as of the lead-in based on this</p> <p>24 e-mail. I would have definitely talked to Brian about</p> <p>25 the e-mail of August 18, Exhibit, is it 6?</p>

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<p>1 Q. 6, yes.</p> <p>2 A. And so in preparation for that, I would</p> <p>3 have -- I don't recall specifically, but I assume I</p> <p>4 talked to Nancy and Susan at some point about it.</p> <p>5 Q. You don't recall but you think you did,</p> <p>6 though?</p> <p>7 A. Correct. It would be normal for me to do</p> <p>8 that.</p> <p>9 Q. Okay.</p> <p>10 A. Because there's payroll and that would need</p> <p>11 to be addressed, as well as Nancy's handling of it, of</p> <p>12 the personnel file.</p> <p>13 Q. Okay. Do you recall what Amy's compensation</p> <p>14 package included during this first period between</p> <p>15 April and September of 2016?</p> <p>16 A. Again, not specifically. That wasn't a</p> <p>17 subject in the notice. But I think it was 65,000</p> <p>18 annual salary, and she would have been available for a</p> <p>19 bonus program, which was \$50 an hour for everything</p> <p>20 billed over a 480-hour quarter. The average was 160 a</p> <p>21 month, what we billed. The bonus program at that</p> <p>22 point was based on a quarterly billable of 480 a</p> <p>23 quarter on calendar in quarters.</p> <p>24 Q. Okay, 480 a quarter. Did it change into 160</p> <p>25 a month, 160 hours a month or -- maybe I'm not</p>	<p>1 Q. Okay. All right. So right up until the time</p> <p>2 that she resigned, did Amy, for lack of a better term,</p> <p>3 complain to you or let you know there were issues she</p> <p>4 was struggling to keep up with the workload and work</p> <p>5 the number of hours that was required to do that?</p> <p>6 A. The September resignation?</p> <p>7 Q. Yes, before that.</p> <p>8 A. So prior to that? I'm sure -- I don't recall</p> <p>9 anything specific, but generally that is a discussion</p> <p>10 I have with every new associate. So I'm assuming --</p> <p>11 and I do recall that was a concern, how do I get it</p> <p>12 done, you know, and we talked at length about managing</p> <p>13 files, working efficiently, and all those types of</p> <p>14 things.</p> <p>15 So I don't know if you -- you used the word</p> <p>16 "complaint." I never really perceived it that way in</p> <p>17 the sense that I have a complaint, but certainly it</p> <p>18 was an issue and it was part of her overall</p> <p>19 frustration.</p> <p>20 Q. Right. And back on Exhibit 6, it looked like</p> <p>21 you were talking about -- or she mentioned that she</p> <p>22 was -- she would welcome the opportunity to work with</p> <p>23 you again after she had the surgery, and do you recall</p> <p>24 any other details of discussions you had with her</p> <p>25 about whether or not she would be able to come back</p>
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<p>1 understanding the timeline.</p> <p>2 Was it 480 per quarter when she started and</p> <p>3 it changed to 160 per month, or vice versa?</p> <p>4 A. No. So we paid an annual salary back -- back</p> <p>5 then we paid an annual salary for her of 65,000 a</p> <p>6 year. That was paid out biweekly. And then we had a</p> <p>7 potential for bonus based on hourly billables, and the</p> <p>8 billables, the bonus was based on a quarterly</p> <p>9 production of billable hours at 480. That makes --</p> <p>10 creates an average of 3 -- or 160 a month. So it's</p> <p>11 just you give them an average of 160 to gauge it by,</p> <p>12 but 480 was the mark per quarter.</p> <p>13 And so that was the compensation package that</p> <p>14 I believe she started with.</p> <p>15 Q. Okay.</p> <p>16 A. I would have to confirm that because, again,</p> <p>17 I didn't research that based on the notice, but I</p> <p>18 would -- I'm pretty sure that's close.</p> <p>19 Q. Okay.</p> <p>20 A. Because we went back and forth with 160 and</p> <p>21 165, and I don't remember the timing in terms of a</p> <p>22 minimum billable that would affect the quarterly.</p> <p>23 So if it was 165, I think that translates to</p> <p>24 a 495 quarter, and I just don't remember the timing of</p> <p>25 how we moved in and out of that over that period.</p>	<p>1 after she had surgery?</p> <p>2 A. I'm sure we would entertain it. Like I said,</p> <p>3 I didn't have any negative feelings about</p> <p>4 Ms. Buchanan, and I was always -- you know, for me</p> <p>5 personally I'm hoping for someone with drive and</p> <p>6 desire to be better professionally, and I saw that in</p> <p>7 her. Just huge -- she just had a huge hurdle.</p> <p>8 And so, yeah, I would have entertained it.</p> <p>9 Who knows how long she was going to be out and how the</p> <p>10 firm was going to move forward and stuff, but we would</p> <p>11 certainly entertain it, and we did.</p> <p>12 Q. Okay. I just want to note, in topic number 6</p> <p>13 we did ask for her compensation, any periodic changes</p> <p>14 thereto. I don't think it changed. It was 65,000,</p> <p>15 based on annual salary of 65,000 all the way up until</p> <p>16 she resigned on September 2nd. There wasn't any</p> <p>17 change in that, was there, during that time period?</p> <p>18 A. I apologize. I read over that. I was</p> <p>19 thinking more in terms of duty in scheduling and</p> <p>20 supervision, and I didn't really see -- I apologize.</p> <p>21 It is in there, but I think what I told you is right.</p> <p>22 Q. I don't think there is any controversy,</p> <p>23 though, 65,000 is what it was, and it didn't changed</p> <p>24 up until the time she resigned in September?</p> <p>25 A. I mean, I know, salary and the bonus;</p>

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<p>1 correct.</p> <p>2 Q. Okay. In terms of other compensation, I</p> <p>3 think there was health insurance; is that right?</p> <p>4 A. Yes. I think of that more as a benefit, but</p> <p>5 yes. So we had health insurance that we provided.</p> <p>6 And she had -- for all the associates, they can take a</p> <p>7 week, do vacation and do sick leave. We don't really</p> <p>8 track that. So that's available to them.</p> <p>9 We just want them to meet the minimum</p> <p>10 billables over that quarter. So we give them the</p> <p>11 liberty to take vacations and use sick leave as they</p> <p>12 need to and schedule as they need to with the idea</p> <p>13 that you want to be in the office as much as you can,</p> <p>14 but -- so I call that a benefit even though the bonus</p> <p>15 still calls for the 480 quarterly or 495, whichever</p> <p>16 was in place at that time.</p> <p>17 Q. And you did mention minimum billables. What</p> <p>18 was the minimum?</p> <p>19 A. 480 -- well, minimum in the sense of bonus is</p> <p>20 480 quarterly or 495, depending on whatever time</p> <p>21 period we're talking about, and so that quarterly</p> <p>22 minimum would translate down to an average of 160 or</p> <p>23 165.</p> <p>24 Q. Okay. And so that was the threshold to get</p> <p>25 to the bonus, but you also considered that to be the</p>	<p>1 well, before we get there, anything else about topic 6</p> <p>2 here, her title, job duties, compensation, work</p> <p>3 schedule, supervision of her work, identities of her</p> <p>4 supervisors. I take it you were her supervisor,</p> <p>5 Mr. Letofsky was also, or was it mostly you?</p> <p>6 A. I interacted mostly with Ms. Buchanan,</p> <p>7 although Mr. Letofsky had every authority to supervise</p> <p>8 her and help her along as he saw fit. My -- I was the</p> <p>9 one focused primarily on Nevada at that time. We then</p> <p>10 started a series of cases in Eldorado, against the</p> <p>11 Eldorado Resorts Corporation, which was a timeshare</p> <p>12 company. I don't remember the overlap with</p> <p>13 Ms. Buchanan's employment, but there was a time when</p> <p>14 Brian was out here quite a bit. The point is, he</p> <p>15 could supervise her too.</p> <p>16 For title, just to get back to point 6, was</p> <p>17 associate attorney, job duties included management of</p> <p>18 a file and, you know, all the files that we had, which</p> <p>19 would include summarizing discovery, summarizing</p> <p>20 records, attending depositions, going to mediations,</p> <p>21 going to court, going to meetings with clients, having</p> <p>22 initial client meetings, reviewing case files with me</p> <p>23 or Mr. Letofsky as a general sense of management of</p> <p>24 the files.</p> <p>25 We talked about her -- conversation her work</p>
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<p>1 minimum that they needed?</p> <p>2 A. Yeah. I mean, we've called it a minimum for</p> <p>3 as long as Brian and I have been together, but to be</p> <p>4 honest, I don't know that I've ever gone to an</p> <p>5 associate and said your hours aren't good enough, you</p> <p>6 are out of here, that I can recall. That may have</p> <p>7 happened, but usually the hours are the result of</p> <p>8 other issues, not the other way around.</p> <p>9 Q. So 160, that's roughly 40 hours a week. It's</p> <p>10 a little bit less because there is slightly more than</p> <p>11 four weeks in a month.</p> <p>12 A. Yeah, depends on how you look at it, but</p> <p>13 yeah, generally on the average, 22 billable days a</p> <p>14 month I think is what it works out to, or 21,</p> <p>15 something like that. So however it works out. It's</p> <p>16 on average eight billable hours of each workday a</p> <p>17 month, yeah.</p> <p>18 Q. Okay.</p> <p>19 A. Which doesn't translate to eight</p> <p>20 working hours.</p> <p>21 Q. Right. No, I understand it. That's</p> <p>22 billable hours they are actually doing work that you</p> <p>23 could charge your clients for?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. All right. And so Amy goes on --</p>	<p>1 schedule was fluid, you work as you need to. She had</p> <p>2 remote access, at least at some point in time we set</p> <p>3 that up. So it's just really about getting the work</p> <p>4 done.</p> <p>5 We would prefer to not have somebody work</p> <p>6 from 8:00 in the evening until 7:00 in the morning and</p> <p>7 never be in the office, so we tried to keep normal</p> <p>8 working hours, but a very flexible schedule.</p> <p>9 Q. That was going to be a question I had. You</p> <p>10 didn't have set -- when she was the only employee, you</p> <p>11 didn't have set hours that she needed to be there?</p> <p>12 A. I mean "set" is a vague word. In that</p> <p>13 context, we wanted them to be there during the workday</p> <p>14 because that's when I'm working and interaction could</p> <p>15 occur better then than in the evenings, and that's</p> <p>16 when meetings would happen and depos and things of</p> <p>17 that nature, so but there was great flexibility in it.</p> <p>18 Q. So did you have like a Las Vegas</p> <p>19 phone number?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Is that a "yes"?</p> <p>22 A. Yes, we did.</p> <p>23 Q. And so would that phone be answered from</p> <p>24 California if somebody called the --</p> <p>25 A. No.</p>

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<p>1 Q. -- Las Vegas number?</p> <p>2 A. No. It rings direct. And when we were with</p> <p>3 Mr. Sullivan, it went directly there. As far as I can</p> <p>4 recall, it's always been set up that way.</p> <p>5 We have a rollover function. I don't know if</p> <p>6 that's still in place. We did at one point. But the</p> <p>7 phones -- we had a separate phone number and it rang</p> <p>8 direct to the office.</p> <p>9 Q. I'm just wondering, with only one employee</p> <p>10 there, Ms. Buchanan, during a particular period of</p> <p>11 time, and if she's not at the office to answer the</p> <p>12 phone, who answers it?</p> <p>13 A. It forwarded to California to pick up and</p> <p>14 take a message for her and relay the message back.</p> <p>15 Q. Okay. Well, and also you were practicing</p> <p>16 here too. So would you get phone calls on your Nevada</p> <p>17 cases to that number?</p> <p>18 A. To the local number here?</p> <p>19 Q. Yes.</p> <p>20 A. Yes. Most of the time I dealt with my</p> <p>21 cell phone. On a very rare occasion they would call</p> <p>22 direct to the office, but most everyone has my cell.</p> <p>23 Q. So your office was not really one where you</p> <p>24 would expect members of the public to walk in; right?</p> <p>25 It would be more by appointment?</p>	<p>1 Q. Okay.</p> <p>2 A. From my experience, you develop better</p> <p>3 professionally when you are there during the workday</p> <p>4 handling the things that come into the office during</p> <p>5 the workday and dealing with me and opposing counsel</p> <p>6 and so on.</p> <p>7 Q. Okay. Topic 7, I just want to make sure we</p> <p>8 button these things up:</p> <p>9 "General nature, scope and extent of</p> <p>10 defendant's business and operations and more</p> <p>11 particularly with respect to plaintiff's</p> <p>12 employment with defendant."</p> <p>13 It's a law firm; right? I mean, it's --</p> <p>14 A. Correct. It's a litigation firm. During</p> <p>15 Ms. Buchanan's time, I don't think we did much</p> <p>16 business consultation, although we do some more of</p> <p>17 that now. We may have, but it was primarily</p> <p>18 litigation and then primarily in employment. I don't</p> <p>19 know that we ever got any real traction on family law.</p> <p>20 We did a little bit here and there, but I don't think</p> <p>21 we got much traction on that.</p> <p>22 Q. Okay. So Ms. Buchanan resigned September 2nd</p> <p>23 to go and deal with her medical issues related to her</p> <p>24 back injury, I think, and the other items that we</p> <p>25 talked about; she told you she had headaches and had</p>
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<p>1 A. Yeah. I mean, I've never had a situation</p> <p>2 where we had just that type of sidewalk traffic coming</p> <p>3 in. It's always by appointments for as long as I've</p> <p>4 practiced.</p> <p>5 Q. Or like if a runner was bringing you, you</p> <p>6 know, papers to serve on the office, if she wasn't</p> <p>7 there, then there wouldn't be anybody to receive it,</p> <p>8 or is it do you have like an executive office setup?</p> <p>9 What happens if people show up with papers if nobody</p> <p>10 is there? Is there like a central reception?</p> <p>11 MR. ORTUNO: Object to form.</p> <p>12 THE WITNESS: Yeah, today it's different. So</p> <p>13 I would be speculating on if that even happened back</p> <p>14 then. I don't recall that ever being an issue --</p> <p>15 BY MR. KEMP:</p> <p>16 Q. Okay.</p> <p>17 A. -- to be honest. I don't recall that having</p> <p>18 been an issue, so I don't have an answer for you.</p> <p>19 Q. Suffice it to say, you didn't tell her she</p> <p>20 had to be there between 9:00 a.m. and 5:00 p.m. every</p> <p>21 day?</p> <p>22 A. She didn't punch a clock, but we wanted her</p> <p>23 there between 9:00 and 5:00 if she could be there,</p> <p>24 because that's when the workday is happening for</p> <p>25 everybody.</p>	<p>1 trouble focusing and concentrating, had fatigue, but</p> <p>2 at some point she comes back to work for you. How did</p> <p>3 that happen? How did that come about?</p> <p>4 A. I don't recall specifically. I would assume</p> <p>5 at some point she had indicated that she had her</p> <p>6 surgery and she was ready to try and come back, but</p> <p>7 she had limited -- she was going to have to work on a</p> <p>8 limited basis. We had a need at that point -- I know</p> <p>9 Mr. Forster still was with us. We were well into the</p> <p>10 Eldorado cases and we needed help.</p> <p>11 So I don't remember -- I can't -- I don't</p> <p>12 remember who reached out to whom first. I'm assuming</p> <p>13 she reached out to us and we discussed it and said,</p> <p>14 well, let's try 50 percent and see if that works, that</p> <p>15 gets you back in, it gets us some help, and we'll see</p> <p>16 if it can work.</p> <p>17 MR. KEMP: Okay. We'll make this Exhibit 8.</p> <p>18 (Exhibit 8 was marked for identification.)</p> <p>19 MR. KEMP: So Exhibit 8 is a</p> <p>20 one-page document, it ends in defendant's Bates stamp</p> <p>21 1376, e-mail, Wednesday, 30 November 2016, from</p> <p>22 Amy Buchanan to Dan Watkins, subject "Tentative</p> <p>23 Schedule/Availability."</p> <p>24 Q. Do you remember getting this e-mail?</p> <p>25 A. Again, I don't recall it coming in. I do</p>

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<p>1 recall, as I read this, it reminds me of our</p> <p>2 conversation that she said she wanted to come back but</p> <p>3 there were going to be limitations, and I said you</p> <p>4 need to let me know what they are. So this would be</p> <p>5 her responding in that respect, saying this is what I</p> <p>6 would like to try.</p> <p>7 So I recall the general gist of the subject</p> <p>8 of the e-mail.</p> <p>9 Q. Okay. It says specifically:</p> <p>10 "Hi, Dan. Per our conversation, I'm</p> <p>11 proposing a part-time work schedule of</p> <p>12 20 hours per week Monday through Thursday. I</p> <p>13 could start as early as Monday, December 5th.</p> <p>14 As of now, I'm not available December 9th and</p> <p>15 have an appointment the morning of</p> <p>16 December 12th. I'll be out of town during</p> <p>17 the last week of December but I'm sure I</p> <p>18 could get some work done remotely."</p> <p>19 Did I read that correctly?</p> <p>20 A. You did.</p> <p>21 Q. Okay. And so did you agree with this</p> <p>22 proposed schedule, this 20 hours a week working Monday</p> <p>23 through Thursday?</p> <p>24 A. We did.</p> <p>25 MR. KEMP: Okay. This is Exhibit 9.</p>	<p>1 A. You did.</p> <p>2 Q. It looks like Susan then responded to you on</p> <p>3 October 4th -- I'm sorry. This was taken from an</p> <p>4 archive. Looks like she responded to you on 30</p> <p>5 November 2016, to both you and Brian Letofsky, saying</p> <p>6 \$65,000. Is that right?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So she's going to come back, she's</p> <p>9 going to work half time, 20 hours a week during a</p> <p>10 Monday through Thursday, and she's going to be paid</p> <p>11 half of what she was being paid before. Is that how</p> <p>12 it was going to work?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. No bonus opportunity, though. Why</p> <p>15 would that be?</p> <p>16 A. We had just started -- well, actually we had</p> <p>17 done it in the past, I don't think we had just</p> <p>18 started, where we had gone to like a half schedule for</p> <p>19 associates of maybe once or twice per year. We tried</p> <p>20 that in California. The bonus is not provided on the</p> <p>21 minimum billables going to half because it would be</p> <p>22 wholly unfair to allow an employee to say they are</p> <p>23 going to go half time and then bill a regular schedule</p> <p>24 and get the bonus. It would be unfair to the other</p> <p>25 associates.</p>
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<p>1 (Exhibit 9 was marked for identification.)</p> <p>2 MR. KEMP: Exhibit 9 is two pages. It's got</p> <p>3 defendant's Bates stamp 1362 and 1363. At the bottom</p> <p>4 is the e-mail that we just went over in Exhibit 8.</p> <p>5 Sorry for the duplication. I probably could have</p> <p>6 gotten away with just one of these.</p> <p>7 Q. The top e-mails, there's one from you to</p> <p>8 Brian Letofsky with a CC to Susan Watkins on</p> <p>9 November 30th, 2016, "Tentative</p> <p>10 Schedule/Availability." Looks like you forwarded the</p> <p>11 e-mail from Amy with her proposal.</p> <p>12 Do you remember doing this and discussing it</p> <p>13 with Brian and Susan?</p> <p>14 A. I don't remember sending the e-mail. I do</p> <p>15 remember discussing it with them, but I don't deny</p> <p>16 that I sent it. This would be how I would handle</p> <p>17 things. I just don't specifically recall.</p> <p>18 Q. Okay. So it says:</p> <p>19 "Brian, this is Amy's proposal regarding</p> <p>20 work schedule. With her proposed schedule,</p> <p>21 we would have her on half time. We would set</p> <p>22 her up with half minimums but no bonus</p> <p>23 opportunity. You good with this? Susan, can</p> <p>24 you tell me Amy's salary when she left?"</p> <p>25 Did I read that correctly?</p>	<p>1 So when we placed employees on reduced</p> <p>2 schedules, they couldn't satisfy the 480 quarterly</p> <p>3 requirement. Therefore, there would be no bonus. We</p> <p>4 didn't adjust the bonus requirement of 480 or 495</p> <p>5 downward because we didn't think that would be fair.</p> <p>6 Q. Because she really wasn't expected to work</p> <p>7 more than 20 hours?</p> <p>8 A. Yeah, by virtue of the minimum schedule or</p> <p>9 the reduced schedule they could never meet the minimum</p> <p>10 billables.</p> <p>11 Q. Okay. Did you speak with Amy about that,</p> <p>12 about the fact that there would be no bonus</p> <p>13 opportunity?</p> <p>14 A. I'm sure I did. That's what I relay to them</p> <p>15 in the conversation.</p> <p>16 Q. Okay. I mean, I know you are saying you are</p> <p>17 sure you did, but do you have a specific memory of</p> <p>18 discussing that with Amy?</p> <p>19 A. No. I don't have a specific memory of</p> <p>20 discussing her coming back either, but I know she did,</p> <p>21 and I know how we did things. So if you are asking</p> <p>22 me, I would have talked to them, but I don't have a</p> <p>23 specific memory of that, and I would have talked to</p> <p>24 her.</p> <p>25 Q. Okay. Just to follow up on that briefly,</p>

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<p>1 what specifically do you remember about conversations, 2 or do you not remember any conversations specifically 3 at all but just know that they happened because of 4 these e-mails? 5 A. Are you talking about all conversations? 6 Q. Specifically about her coming back around the 7 end of November. 8 A. Yeah, I don't have a specific memory of any 9 of that other than a vague, vague, foggy memory of a 10 phone to my ear and talking to Ms. Buchanan about 11 several issues. I mean, I know we talked a lot on the 12 phone. But any specific conversation, I really don't 13 have any on the subject we've talked about so far. 14 MR. KEMP: Make this Exhibit 10. 15 (Exhibit 10 was marked for identification.) 16 MR. KEMP: Exhibit 10, we've got two pages 17 ending in defendant's Bates stamp 1311, 1312, e-mails 18 from December 14th, 2016. The first one in time is at 19 the bottom of the page marked 1311 from Susan Watkins 20 to Dan Watkins, December 14th, 2016. "Can you tell me 21 the terms of her employment?" The subject was 22 "Amy Buchanan." It says, "Can you tell me the terms 23 of her employment?" 24 Q. Do you recall getting this e-mail from Susan? 25 A. No, not specifically.</p>	<p>1 the time, the days that she was going to work; right. 2 MR. KEMP: Okay. Tell you what. We've been 3 going about an hour. Good time to take about a 5- to 4 10-minute break. Okay? 5 THE WITNESS: Okay. 6 MR. KEMP: Let's go off the record. 7 (Recess taken.) 8 MR. KEMP: Let's go back on the record. 9 Q. I'll remind you you are still under oath. 10 Okay? 11 A. Yes. 12 Q. All right. So when Ms. Buchanan came and 13 asked you -- or not when she came and asked you, but 14 when you and she discussed coming back at this 15 50 percent time, that she was going to work the 16 20 hours a week, four days a week, five hours a day, 17 did you and she talk about any other ways in which the 18 firm might be able to accommodate her for her issues 19 she was having? 20 A. Well, what issues? 21 Q. With her health, the fact that she had to go 22 out for surgery, that she was having problems with 23 this back injury, headaches, problems focusing, 24 problems concentrating, problems with fatigue. 25 A. Not that I recall. The issue for her was</p>
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<p>1 Q. Any doubt that you got it from Susan? 2 A. No. It's what she usually sends. It's the 3 type of e-mail I get when somebody starts. 4 Q. Okay. And so then it looks like you 5 responded to her, "her" being Susan, you responded to 6 Susan, with a CC to yourself, Brian Letofsky, and 7 Nancy Letofsky, Wednesday, 14 December 2016 at 10:03: 8 "Amy is working at same salary she had 9 before she left. I can't recall what it was. 10 But she is working at 50 percent, 4 days a 11 week, at 5 hours a day. Her first day back 12 is 12/5. We need her back on the E&O 13 insurance if she was taken off. Thanks, 14 Dan." 15 Did I read that correctly? 16 A. You did. 17 Q. Okay. Do you remember sending that e-mail to 18 Susan, Brian, and Nancy? 19 A. Not particularly, but I'm sure I did. 20 Q. Okay. And that accurately reflects the 21 terms, the agreement with Amy about what she was going 22 to be working coming back, is that right, in terms of 23 the -- that she was going to be working 50 percent, 24 four days a week, five hours a day? 25 A. It's accurate in terms of her schedule and</p>	<p>1 that she needed less stress that would help with the 2 fatigue, the headaches, the focus, the concentration. 3 So less time created a better product, and less issues 4 with that, with those medical conditions. 5 Q. And working fewer hours was going to help 6 with that? 7 A. Yes. 8 Q. Okay. But did she tell you she needed 9 anything else to help accommodate that, is my 10 question. 11 A. No. Did she ask for additional 12 accommodations, no. 13 Q. The only accommodations she sought was to 14 work fewer hours? 15 A. Yes. 16 Q. Okay. Going a little bit broader, at any 17 time that she was working for you, did she ever ask 18 for any other accommodations other than a reduced 19 schedule? 20 A. I'm not sure -- 21 Q. Not just at the time -- 22 A. Not in any formal sense, but there were 23 several occasions where she was in the office and she 24 would have a migraine, so she would take a nap, place 25 her head on the table for an extended period, throw</p>

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<p>1 up, things like that. So we allowed, obviously, for</p> <p>2 that process to go she could leave, she didn't have to</p> <p>3 stay.</p> <p>4 So in terms of accommodating those symptoms</p> <p>5 and issues when they came about, we let her take care</p> <p>6 of them, didn't say stay in the office, it's Thursday</p> <p>7 and you have to give us five hours. You have a</p> <p>8 migraine and you are throwing up in the office; you</p> <p>9 should probably not have to be there. So to that end</p> <p>10 we accommodated it, but it wasn't a set accommodation</p> <p>11 because it was a, if you need to leave, you need to</p> <p>12 leave.</p> <p>13 Q. Okay. But you also gave her the option of</p> <p>14 basically taking breaks if she needed to put her head</p> <p>15 down?</p> <p>16 A. Sure. Never said don't do that.</p> <p>17 Q. Okay.</p> <p>18 A. So we didn't have a formal discussion on</p> <p>19 accommodations related to rests and migraine breaks</p> <p>20 and going home if she's sick, can't focus, but we did</p> <p>21 allow for that.</p> <p>22 Q. Okay.</p> <p>23 A. We were trying to find a way to have her be</p> <p>24 in a productive condition when she was in the office,</p> <p>25 for her and for us.</p>	<p>1 change in her reduction in hours. But along the way,</p> <p>2 Ms. Buchanan kept us informed of her condition. She</p> <p>3 informed us of diagnoses even though I never asked for</p> <p>4 that, but she would give that to us. So she sent</p> <p>5 several different e-mails indicating her condition on</p> <p>6 a particular day involving a migraine or need to go to</p> <p>7 see a doctor and then, as she went through treatment</p> <p>8 and sought information and consultation from medical</p> <p>9 providers, she kept us informed. So there was</p> <p>10 actually quite a bit of that communication going all</p> <p>11 the way back to when she informed us about the</p> <p>12 accident and its impact.</p> <p>13 So there's a lot there. I can't just give</p> <p>14 you -- I would not be able to give you a narrative</p> <p>15 that covered it all.</p> <p>16 Q. Do you recall her providing you with any</p> <p>17 doctors' notes?</p> <p>18 A. Oh, sure.</p> <p>19 Q. I probably have those and we'll probably come</p> <p>20 to those.</p> <p>21 But did she tell you that she had a diagnosis</p> <p>22 of fibromyalgia, for example?</p> <p>23 A. So fibromyalgia came up, and I can't recall</p> <p>24 if that's what was ruled out or that was diagnosed.</p> <p>25 It was in the e-mail. She was trying to get to the</p>
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<p>1 Q. All right. And we did talk a little while</p> <p>2 ago, talked about the back injury, the headaches,</p> <p>3 trouble focusing, trouble concentrating, the fatigue.</p> <p>4 Topic number 9 is asking about the defendant's</p> <p>5 knowledge of -- "knowledge and understanding of</p> <p>6 plaintiff's condition or disability and limitations on</p> <p>7 her ability to perform her daily living activities or</p> <p>8 job duties." Do you have anything -- let me ask you</p> <p>9 this way:</p> <p>10 Are there any other things that you were</p> <p>11 informed of, given knowledge of before her medical</p> <p>12 condition, any diagnoses that she received, anything</p> <p>13 that impacted on her daily living activities and</p> <p>14 ability to do her job?</p> <p>15 MR. ORTUNO: I'm going to object as far as it</p> <p>16 requires any expert medical testimony.</p> <p>17 But go ahead.</p> <p>18 MR. KEMP: I'm just asking what he was told</p> <p>19 or what he was informed of.</p> <p>20 MR. ORTUNO: Okay.</p> <p>21 MR. KEMP: Gained knowledge of.</p> <p>22 THE WITNESS: Sure.</p> <p>23 It's a little -- it's a little overbroad</p> <p>24 because her time working there consisted of two</p> <p>25 different parts, and then within that time there was a</p>	<p>1 root cause. I think in that sense it was the fatigue</p> <p>2 that was the main focus, but I don't recall. It's in</p> <p>3 an e-mail that she sent to us.</p> <p>4 Q. Okay. We'll probably come to that.</p> <p>5 A. The fibromyalgia was brought up, and I think</p> <p>6 she was ruling out something else at the time, or</p> <p>7 vice versa.</p> <p>8 Q. Something about an autoimmune disease?</p> <p>9 A. Yes. And I don't know which one was being</p> <p>10 ruled out and which one was the diagnosis.</p> <p>11 Q. I'm sure we'll get --</p> <p>12 A. Yeah, it's in there.</p> <p>13 Q. We'll come back to that.</p> <p>14 This will be our next exhibit. Is this 11?</p> <p>15 THE REPORTER: Yes.</p> <p>16 (Exhibit 11 was marked for identification.)</p> <p>17 MR. KEMP: Exhibit 11, a one-page document,</p> <p>18 defendant's Bates stamp ending in 1371. We have</p> <p>19 e-mails here regarding "Work Schedule."</p> <p>20 Q. Do you recall sending the e-mail to</p> <p>21 Ms. Buchanan dated Monday, February 20th, 2017,</p> <p>22 with copies to Brian Letofsky and Nancy Letofsky and</p> <p>23 Susan Watkins?</p> <p>24 A. No, I don't recall receiving [sic] it</p> <p>25 specifically.</p>

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<p>1 Q. Okay. It says:</p> <p>2 "Amy, as we discussed last Friday, I</p> <p>3 need your proposed work week. I hoped to</p> <p>4 have it today. Please send me the schedule</p> <p>5 no later than noon tomorrow. Thank you,</p> <p>6 Dan."</p> <p>7 Did I read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. So was this something you were doing week to</p> <p>10 week, where you were asking her to provide you with a</p> <p>11 schedule of what her work was going to entail?</p> <p>12 A. No.</p> <p>13 Q. What was this about, then? Do you recall?</p> <p>14 A. It was about adjusting her work schedule to</p> <p>15 have her do more, to be in the office more.</p> <p>16 Q. Okay. So more generally, just when she was</p> <p>17 going to be working?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And so then the e-mail here, where it</p> <p>20 looks like she responded to you the next day on</p> <p>21 February 21st, says:</p> <p>22 "Hi, Dan. Let's go with Monday through</p> <p>23 Thursday 9:00 to 5:00 p.m. with an hour</p> <p>24 lunch. Also, my back injection has been</p> <p>25 rescheduled to March 9th, (out all day) with</p>	<p>1 entire time of having enough time to work and do it</p> <p>2 and develop as an attorney was still there, and she</p> <p>3 wanted to do more in terms of time to be productive as</p> <p>4 an associate and to develop professionally.</p> <p>5 And the four hours -- five hours four days a</p> <p>6 week wasn't enough time to do the work that we needed</p> <p>7 to have done, so she was asking to stay with this</p> <p>8 increased schedule, not that we talked about leaving,</p> <p>9 but to contribute with this increased schedule to 80</p> <p>10 percent to better address the workflow.</p> <p>11 Q. Okay. So it went from 50 percent to</p> <p>12 80 percent?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And did she approach you to increase</p> <p>15 it because she felt like she needed more time to get</p> <p>16 things done, or did you ask her if she could increase</p> <p>17 it so that she could get more done?</p> <p>18 A. There wasn't, that I recall, a specific like</p> <p>19 time when she said, hey, I want to increase it. We</p> <p>20 talked so much that everything was a general flow. So</p> <p>21 I don't recall who brought it up for the first time,</p> <p>22 but she clearly wanted to increase the time, and we</p> <p>23 clearly needed, if she could, to increase the time,</p> <p>24 but I never said you need to increase the time. So it</p> <p>25 would have been her request to do more.</p>
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<p>1 a follow-up doctor's visit March 10th at 3:15</p> <p>2 p.m. If this does not work I need to notify</p> <p>3 them ASAP as the only other date currently</p> <p>4 available is March 23rd.</p> <p>5 "My physical therapy is supposed to be</p> <p>6 twice a week but has been put on hold due to</p> <p>7 insurance reasons. I do not know when it</p> <p>8 will take place.</p> <p>9 "There may be changes with a transition</p> <p>10 in insurance. I will keep you posted once I</p> <p>11 have answers."</p> <p>12 Did I read that correctly?</p> <p>13 A. Yes.</p> <p>14 Q. All right. So my understanding was that it</p> <p>15 was around this time, so almost about three months</p> <p>16 after she came back, that she went from working</p> <p>17 20 hours a week, 50 percent, to more -- which was</p> <p>18 five hours a day Monday through Thursday, to actually</p> <p>19 working a full eight hours a day Monday through</p> <p>20 Thursday. Is that right?</p> <p>21 A. There was a transition to an 80 percent</p> <p>22 schedule, yes, and this appears to be that.</p> <p>23 Q. What do you recall about that? What were the</p> <p>24 discussions or how did that come up?</p> <p>25 A. The frustration Amy had experienced the</p>	<p>1 Q. Okay. And with the increase to 80 percent,</p> <p>2 what was going to happen with her pay?</p> <p>3 A. It would be a commensurate increase to</p> <p>4 80 percent.</p> <p>5 Q. Okay. What about the bonuses? Was she still</p> <p>6 not going to be eligible for bonuses?</p> <p>7 A. Correct.</p> <p>8 Q. Did you actually have that discussion with</p> <p>9 her?</p> <p>10 A. That she would still not be eligible for</p> <p>11 bonus? No, I don't recall that.</p> <p>12 Q. When she first came back, I mean, we saw it</p> <p>13 in your e-mail in the discussion with Susan, I think</p> <p>14 it was, that she wasn't going to be eligible for</p> <p>15 bonus.</p> <p>16 Did you actually tell her that she wasn't</p> <p>17 going to be eligible for the bonuses at that time?</p> <p>18 A. Which time?</p> <p>19 Q. At the time that you had sent the e-mail</p> <p>20 talking about how there would be no bonus</p> <p>21 opportunities, back on Exhibit 9, this e-mail from</p> <p>22 November 30th --</p> <p>23 A. Yes.</p> <p>24 Q. -- to Brian with a copy, CC to Susan.</p> <p>25 A. Yes.</p>

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<p>1 Q. You actually told Amy that she would have no 2 eligibility for bonuses?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall there being any kind of 5 discussion about the number of hours necessary to 6 achieve bonus being adjusted because the person or 7 persons working in the Las Vegas office had more 8 administrative duties in that they were basically 9 running the office?</p> <p>10 A. No.</p> <p>11 Q. No discussion about how it might only be 12 150 hours a month to achieve a bonus?</p> <p>13 A. No.</p> <p>14 Q. Okay. So she goes back and -- or not goes 15 back, but she comes up to working 80 percent some time 16 late February or early March of 2017.</p> <p>17 Did that -- at some point, did that become a 18 problem? Did she tell you she was having trouble 19 working that much?</p> <p>20 A. Did what become a problem?</p> <p>21 Q. The fact that she had increased from 50 to 22 80 percent. Did she raise any issues or make any 23 complaints or express concerns that she wasn't able to 24 keep up with that kind of schedule?</p> <p>25 A. No, not in that way. That it goes back to</p>	<p>1 during a migraine, or I can't be in the office today 2 because I feel sick or whatever. That was never -- 3 let me say it -- she never said, you're making me stay 4 and I'm sick, you're making me stay and I have a 5 migraine, you are making me stay and my back's killing 6 me, you're making me stay and I'm throwing up. That 7 was never a discussion, because she always had the 8 flexibility to take whatever time off she needed to 9 address those issues if they came up while she was at 10 work. So I'm not sure I understand.</p> <p>11 Q. Well, okay. Let me follow up with this: 12 Do you recall her coming to you and 13 expressing a concern that, even at the 80 percent, she 14 wasn't able to keep her hours to just working the 15 80 percent of full-time because of the workload that 16 she had?</p> <p>17 A. There was a discussion that goes back to -- 18 that was similar to the discussion we had in the 19 September time frame, which was she can't do the work 20 and address the medical issues at the same time and 21 she needed -- so there was that how do I do the work 22 and address the medical issues, whether it's 23 50 percent, 80 percent, and that eventually led to her 24 saying that she needed to again go and figure out 25 what's going on medically and we need to find a new</p>
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<p>1 the discussion I had, we talked about earlier where 2 young associates are always talking about time 3 management and efficiency to complete the projects 4 that are before them, and so that was an ongoing 5 discussion with Ms. Buchanan, as it is with every new 6 associate I can recall working with, and as it was for 7 me.</p> <p>8 Q. Okay. But specifically with respect to her 9 physical condition, her --</p> <p>10 A. I'm not sure I know what you're -- I don't 11 understand.</p> <p>12 Q. Well, I'm just asking, you know, after she 13 went to the 80 percent did she come back and say, no, 14 my physical condition is really not allowing me to do 15 this, I'm having trouble with this because of my 16 physical condition? I guess I'm looking more --</p> <p>17 A. No, I don't recall a connection between 18 medical condition and an increase in hours. They were 19 always -- there was always -- she could leave and come 20 and go as she needed to with those issues, so the 21 flexibility to be there at times when she could be 22 productive was there and it was about managing 23 workflow.</p> <p>24 So it was never I can't do the work because 25 I'm having a migraine and I have to be in the office</p>	<p>1 attorney.</p> <p>2 Q. Okay.</p> <p>3 A. So I don't know if I'm answering your 4 question.</p> <p>5 Q. No, I think this next exhibit will help us 6 explore that a little bit more, Exhibit 12. (Exhibit 12 was marked for identification.)</p> <p>8 MR. KEMP: Exhibit 12 is -- it goes from 9 defendant's Bates stamp ending in 1364 up through and 10 including 1370.</p> <p>11 Q. Take a minute and look through that, and let 12 me know when you've had a chance to review it.</p> <p>13 For the record, these are e-mails from May 11 14 and May 12 of 2017.</p> <p>15 A. (Document review.) It's just the same 16 chain -- okay.</p> <p>17 Q. Yeah, there may be some duplication.</p> <p>18 A. Okay. I've looked at it.</p> <p>19 Q. Okay. I just saw something that made me -- 20 that raised a question I had as I looked through the 21 documents in the case.</p> <p>22 If you could look at the top of 1368, this -- 23 at the very top it says "archived Thursday, October 24 24th, 2019, 11:13:13 a.m.," from Dan Watkins to 25 Amy Buchanan. There's a hole punched there,</p>

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<p>1 unfortunately. I believe it's a CC to Brian Letofsky, 2 subject "RE: Update for today." 3 Unlike most of the other e-mails, there's no 4 notation of when it was sent. And I noticed in 5 looking through e-mails that have been produced in the 6 case, that there are several like that. 7 Do you have any idea or any explanation as to 8 why that particular e-mail doesn't have a sent 9 line that shows a date and time it was actually sent? 10 A. I don't. 11 Q. I noticed maybe four or five, half a dozen, 12 when going through the e-mails preparing for the 13 deposition, that there were some that were like that, 14 that just didn't say when they were sent. 15 MR. ORTUNO: Let me say this. I did put 16 together the discovery and I did notice that myself, 17 and I'm not really exactly sure. It might have been 18 part of the archiving process. But we could probably 19 dig back and figure out which ones if you have ones 20 that you're concerned with. 21 I assumed, because there's like date stamps 22 on the ones around them, that it would be pretty easy 23 to figure out. But I'm sure we could probably dig up 24 actual e-mails that did have the to and from. My 25 assumption was that it happened within the archiving</p>	<p>1 Q. Okay. 2 A. But I definitely recall the general nature of 3 these conversations because it was an ongoing thing 4 for pretty much the entire time she was there. It 5 wasn't an everyday and sometimes not an every-week 6 thing, but we talked a lot. 7 My concern was for Ms. Buchanan always that 8 she get healthy, so we wanted to help her along in 9 that process as best we could because I wanted her to 10 be a successful litigator and she had her entire 11 career in front of her and it wasn't going to happen 12 in a six-month period of time, she was going to need a 13 career to reach her potential. So we wanted her 14 healthy. So that discussion we had all the time. 15 Specific to the e-mail on page WLLLP 1364, 16 the one at the top, I do recall our discussion at 17 about that time that the accommodations were not 18 really anything that she was interested in at that 19 point because it was frustrating even on a reduced 20 schedule, it just wasn't fitting, the workload was too 21 much and it wasn't a fit and she wanted to go and try 22 and get things taken care of. 23 There was a mystery, and I think if we go 24 back, she received a call of concern about an issue. 25 So we go from the normal way of doing -- you know,</p>
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<p>1 process or something like that. 2 THE WITNESS: Yeah, I don't know the answer 3 to the question. 4 BY MR. KEMP: 5 Q. No, I didn't know if you would or not. I 6 wanted to point it out and see if you had any idea, 7 but apparently not. So okay. 8 All right. Getting back to the main point 9 here, so this e-mail chain appears to be where 10 Ms. Buchanan is telling you that she's had updated 11 news from her doctor's office and now she's concerned 12 about whether or not she's going to be able to 13 continue or continue at the same level or go out on a 14 break. 15 What do you recall about -- first of all, do 16 you recall these e-mails or having these discussions 17 with Ms. Buchanan, and so, you know, what else do you 18 recall other than what's in the e-mails here? 19 MR. ORTUNO: Object to form. 20 THE WITNESS: That's pretty compound, but let 21 me try and break it down for you. 22 BY MR. KEMP: 23 Q. Sure. 24 A. I don't recall specifically receiving and 25 sending the e-mails.</p>	<p>1 with her headaches and focus and migraines and things 2 like that, and then she gets this alarming call. And 3 I remember that time period because we were alarmed 4 too. I mean, I wanted her to figure these things out 5 for her. 6 So she gets this call which is alarming to 7 her, and I think it just caused her to say, all right. 8 I got to get to the bottom of what's going on, and she 9 felt it was best to remove herself from the 10 environment, help us find someone else for the time 11 being, and then we can re-connect when she figures 12 things out. 13 Q. So for the record, the call of concern was 14 from her primary care doctor, is what the e-mail says. 15 Right? 16 A. Yes, sir. 17 Q. Thursday, May 11th, 3:44 p.m. 18 A. Yeah, that e-mail, the reference is on WLLLP 19 1365. 20 Q. Yes. Okay. 21 A. So that heightened, I think, her sense of 22 concern about things and a sense of urgency to get to 23 the bottom of it, and that was the precursor to her 24 e-mail. 25 Q. And then you responded that night, it looks</p>

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<p>1 like:</p> <p>2 "I am sorry to hear that and I hope you</p> <p>3 are okay. Please let me know if we need to</p> <p>4 make any accommodation at work. Thank you."</p> <p>5 Did I read that right?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And then on May 12 is when --</p> <p>8 A. And just so you -- I mean, I think it's</p> <p>9 important to point out that e-mail was sent out at</p> <p>10 11:43, so I highlight that to let you know that I did</p> <p>11 care and I was trying to work and I wanted what was</p> <p>12 best for her such that I was addressing this stuff way</p> <p>13 late in the evening so that it didn't get wasted or</p> <p>14 had to delay. I knew it was important for her to get</p> <p>15 to the bottom of it.</p> <p>16 Q. Okay. All right. So the next morning is</p> <p>17 Friday, May 12th, and I note that because she was only</p> <p>18 supposed to be working Monday through Thursday; right?</p> <p>19 A. Sure.</p> <p>20 Q. But there she is working on Friday, May 12th.</p> <p>21 A. She's sending me a personal e-mail updating</p> <p>22 me on her condition, if that's what you call that</p> <p>23 work.</p> <p>24 Q. Okay. Were these e-mails received by you</p> <p>25 from her personal e-mail account or from her work</p>	<p>1 step back and focus on my health. My gut tells me</p> <p>2 we'll need to look for another attorney, and what I</p> <p>3 can do" -- wait. Let me read that again -- "and, what</p> <p>4 I can do is something to be figured out."</p> <p>5 A. Then she says, "I wish I had better news."</p> <p>6 Q. Oh, yes, "I wish I had better news.</p> <p>7 Sincerely, Amy." Okay.</p> <p>8 Did you have any other conversations with her</p> <p>9 about looking for another attorney to work in the</p> <p>10 office?</p> <p>11 A. I don't recall specifically on that subject.</p> <p>12 Q. Did you have any conversations with her</p> <p>13 whether or not she was going to quit or she wanted a</p> <p>14 leave of absence or what was going to happen with</p> <p>15 that?</p> <p>16 A. Well, we talked about this (indicating),</p> <p>17 so -- and I think it's clear that she needs time off</p> <p>18 from work, so that's what we talked about.</p> <p>19 Q. Okay. Did you talk about any other</p> <p>20 accommodations? I mean, you had mentioned in your</p> <p>21 previous e-mail the night before let me know about any</p> <p>22 accommodation at work.</p> <p>23 A. No. We just talked about -- she didn't bring</p> <p>24 it up, so I'm assuming we didn't talk about it. We</p> <p>25 talked about this e-mail, which was pretty certain to</p>
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<p>1 e-mail account?</p> <p>2 A. I don't know. It just says "Amy Buchanan."</p> <p>3 Q. When you responded to her, were you</p> <p>4 responding to the 11:43 p.m. when sending it to a</p> <p>5 personal e-mail account, or you were responding to a</p> <p>6 work e-mail that she sent you?</p> <p>7 A. I don't know. The first e-mail in the chain</p> <p>8 just says "Amy Buchanan." So I don't know where that</p> <p>9 came from.</p> <p>10 Q. Do you recall whether or not you were in the</p> <p>11 habit of sending e-mails to any e-mail other than her</p> <p>12 work e-mail?</p> <p>13 A. Whichever one she sent from I would respond</p> <p>14 to.</p> <p>15 Q. Okay. All right. So on Friday, May 12,</p> <p>16 2017, 10:53:46, she lets you know that she's been</p> <p>17 having a lot of chronic pain and fatigue, frequent</p> <p>18 headaches, migraines, cognitive difficulties, etc.,</p> <p>19 "and still no relief after all the meds and treatment</p> <p>20 I've tried. Another surgery has been recommended but</p> <p>21 I've been insistent this is not the answer. It was</p> <p>22 finally realized that I may have something else going</p> <p>23 on and had some tests done. One came back positive.</p> <p>24 I'll be doing follow-up to help get a definitive</p> <p>25 answer. All I know at this point is I need to take a</p>	<p>1 me that she needed to take a step back, and I wasn't</p> <p>2 about to try and talk her out of that because she</p> <p>3 wanted to focus on her health.</p> <p>4 Q. Was there any discussion about her going back</p> <p>5 to maybe just working the 50 percent hours or some</p> <p>6 other reduced schedule?</p> <p>7 A. No, I don't recall that at this time. I</p> <p>8 think we had moved past that. We talked a lot about</p> <p>9 different types of configurations of scheduling and</p> <p>10 such. I think at this point it was pretty set that</p> <p>11 she needed to move away from law for a bit, but...</p> <p>12 Q. Okay. Because just the one sentence here</p> <p>13 "and, what I can do is something to be figured out."</p> <p>14 A. Correct. A complete unknown.</p> <p>15 Q. Did you all take any steps or have any</p> <p>16 discussions on trying to figure that out, what she</p> <p>17 might be able to do?</p> <p>18 A. No, other than confirming that she was going</p> <p>19 to see healthcare providers who were specialized in</p> <p>20 that field, there wasn't much I thought I could do to</p> <p>21 figure that out. I read that as what she can do is</p> <p>22 something to be figured out, meaning she needs to go</p> <p>23 through the medical evaluation process and determine</p> <p>24 what she can do, and that's the way we discussed it.</p> <p>25 Q. So did she go out on a leave of absence?</p>

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<p>1 A. We called it an indefinite leave of absence; 2 correct. 3 Q. Okay. And do you recall when that started? 4 A. I think there is another e-mail shortly after 5 this that references that. So it would have been in 6 May somewhere. 7 Q. Okay. That may be the next e-mail I have. 8 Let's make this Exhibit 13. 9 (Exhibit 13 was marked for identification.) 10 BY MR. KEMP: 11 Q. Did you consider -- when you asked about 12 accommodations at work, did you consider putting her 13 on a leave of absence, did you consider that to be an 14 accommodation? 15 A. No. 16 Q. No? 17 A. It depends what you mean by "accommodation." 18 She is telling me she needs to step back from work and 19 we need to find a new attorney. Ms. Buchanan had 20 concerns about medical insurance and needing medical 21 insurance. 22 Q. Sure. 23 A. So we left her in a position, we put her into 24 a position where she could continue to receive those 25 medical insurance benefits without having to do any</p>	<p>1 Maybe we had Blue Cross Blue Shield out here. We had 2 different health insurance out here. I think it might 3 have been Blue Cross Blue Shield. 4 Q. Did your plan allow you to have persons on 5 the plan who were not employees of the firm? 6 A. I don't know. I don't know how they defined 7 "employee." I don't know how they defined "covered 8 person," because family members can be covered and 9 they are not employees. So I don't know how that was 10 defined. 11 Q. Only family members of employees, though; 12 right? 13 A. I don't know. I've never looked at the plan. 14 Q. Okay. You don't know -- most plans, you 15 would have to have an employee or employee's 16 dependents, you couldn't put your next-door neighbor 17 on your company's insurance plan without them being an 18 employee, but you don't know whether or not that was 19 the case for your insurance plan? 20 MR. ORTUNO: Objection. Asked and answered. 21 THE WITNESS: Yeah, I don't know what you 22 just said and if that is true or not true. To the 23 extent that she needed to be defined however she 24 needed to be defined for the health insurance, that's 25 what we were doing.</p>
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<p>1 work. So I guess in that sense, yes, she still was -- 2 we left her on payroll so she could get medical 3 insurance, not knowing if she was ever coming back. 4 So I didn't see it in the sense of 5 accommodation with a known adjustment to the work 6 environment and a known return date, which is what you 7 would want with an accommodation. It was more of a 8 she wanted health insurance and that was the way to 9 get it for her. 10 Q. Okay. So you left her -- she maintained her 11 status of an employee of the firm? 12 A. She stayed on payroll. So I don't know what 13 that means in terms of an employee versus -- 14 Q. Well, this was -- I'm sorry. I didn't mean 15 to cut you off. 16 A. That's all right. She was on an indefinite 17 leave of absence. So she was on payroll. Those are 18 the two things that I know. 19 Q. Okay. 20 A. I don't know legally if she was an employee 21 or not, to be honest. 22 Q. What health insurance plan did you have at 23 that time? 24 A. Oh, gosh, I don't know. We had Health Net at 25 one point, but I don't know if that was in California.</p>	<p>1 BY MR. KEMP: 2 Q. Okay. Did you consider her to still be an 3 employee of the firm after she went out on this leave 4 of absence? 5 A. To the extent that she needed to be an 6 employee for health insurance, yeah. 7 Q. Okay. At what point did she stop being an 8 employee? 9 A. I don't know. We never terminated her, if 10 that's what you are asking me. It's an interesting 11 question. 12 Q. Okay. All right. I'm sorry. I digressed a 13 little bit. 14 We'll go back to Exhibit 13 now, which is a 15 one-page document that's got defendant's Bates stamp 16 1300, and this was an e-mail from Amy Buchanan to 17 Dan Watkins, Wednesday, 28 June 2017, subject "Medical 18 Update." It says: 19 "Hi, Dan. This past month's been pretty 20 rough between a bad cold/sinus infection, 21 another urgent care visit, and bad 22 side effects from meds and acupuncture. Good 23 news is I don't have an autoimmune disease as 24 suspected. Bad news is I have fibromyalgia 25 and low T3, the culprits behind my chronic</p>

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<p>1 pain and fatigue. There's no cure. It's a</p> <p>2 matter of trying to manage it. I see my</p> <p>3 neurologist and pain management doctors this</p> <p>4 week, and I'm waiting to see a doctor who</p> <p>5 practices osteopathic medicine next week.</p> <p>6 "As for work, I feel I'm at a loss. I</p> <p>7 know I can't consistently perform all the</p> <p>8 firm's requirements/expectations as a</p> <p>9 full-time associate, and being part-time</p> <p>10 doesn't seem possible. Let me know what your</p> <p>11 thoughts are. Best, Amy."</p> <p>12 Did I read that correctly?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. I don't recall seeing -- and it might</p> <p>15 just be that I missed it. Do you recall, first of</p> <p>16 all, getting this e-mail from Amy, reading it?</p> <p>17 A. Not specifically, but again I don't doubt</p> <p>18 that she sent it.</p> <p>19 Q. Okay. Do you recall any kind of response to</p> <p>20 this, whether you spoke with her on the telephone,</p> <p>21 sent her a text message, sent her another e-mail, any</p> <p>22 way in which you communicated back to her regarding</p> <p>23 this subject matter?</p> <p>24 A. I don't remember the method of communication.</p> <p>25 If there is no e-mail, I'm assuming I didn't send one.</p>	<p>1 was at and other things to do with a law degree, we</p> <p>2 had considerations like that on occasion.</p> <p>3 So I do recall that generally, but not any</p> <p>4 one conversation in particular.</p> <p>5 Q. What about this, sort of toward the end of</p> <p>6 here, where she says "being part-time doesn't seem</p> <p>7 possible"? What do you recall about discussions or</p> <p>8 communications about further part-time work?</p> <p>9 A. I don't recall anything specific other than</p> <p>10 that's probably an accurate impression that she had.</p> <p>11 Q. I'm sorry. I couldn't tell if you were</p> <p>12 saying "inaccurate" or "accurate."</p> <p>13 A. Accurate.</p> <p>14 Q. It is accurate what she was saying about</p> <p>15 part-time wasn't going to be able to work out?</p> <p>16 A. Correct.</p> <p>17 Q. Well, what were your feelings about the</p> <p>18 part-time option?</p> <p>19 A. There wasn't much -- by this point we were</p> <p>20 pretty busy and there was not much of a place for</p> <p>21 part-time employee or a part-time associate. There</p> <p>22 was just too much work. And a person who can only</p> <p>23 work four hours a day or five hours a day may not be</p> <p>24 able to go to a depo because they've got to leave in</p> <p>25 the middle of the depo or they may not be able to go</p>
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<p>1 I prefer to call, so that's what I'm assuming I did.</p> <p>2 I do recall conversations about autoimmune</p> <p>3 disease versus fibromyalgia because I remember</p> <p>4 initially, when it was autoimmune disease, that was a</p> <p>5 possibility that was concerning for her.</p> <p>6 Q. There's an e-mail that mentions autoimmune</p> <p>7 disease.</p> <p>8 A. This one here, or previously?</p> <p>9 Q. No. It's subsequent to this where you wrote</p> <p>10 back saying, well, good news about it not being</p> <p>11 autoimmune disease.</p> <p>12 A. There you go.</p> <p>13 Q. I'm sure we'll come to that.</p> <p>14 But what else do you recall about</p> <p>15 conversations regarding the subject matter?</p> <p>16 A. That it was good in that she was now needing</p> <p>17 to figure out how to deal with this fibromyalgia and</p> <p>18 low T and it seemed to have its own complications, and</p> <p>19 she was in a holding pattern to figure out how she was</p> <p>20 going to be able to handle it and manage it and</p> <p>21 whether even law and practicing as a lawyer was going</p> <p>22 to work in the context of all of that.</p> <p>23 So we talked about those types of things just</p> <p>24 in a general sense, not with respect to our firm, but</p> <p>25 just generally, the demands of law versus where she</p>	<p>1 to court or to mediation or to arbitration, so we</p> <p>2 wanted a situation where the associates managed their</p> <p>3 files top to bottom.</p> <p>4 Mr. Forster at this point was working</p> <p>5 diligently on the Eldorado matters and didn't have</p> <p>6 much time to do extra and overflow, so we needed</p> <p>7 someone to manage a file top to bottom. That included</p> <p>8 being able to work the files and make appearances and</p> <p>9 go to places and do things that would sometimes</p> <p>10 require more than five hours of time a day, and so it</p> <p>11 was going to be really difficult.</p> <p>12 When we first started it we were willing to</p> <p>13 give it a try because I wanted to see Amy succeed, I</p> <p>14 wanted her to help with us, and if we could help her</p> <p>15 grow as an attorney, that would be good, and we wanted</p> <p>16 to see if the part-time thing could work, and it just</p> <p>17 was really hard to manage that.</p> <p>18 Q. So by this point, June of 2017, Mr. Forster</p> <p>19 was still there; is that right?</p> <p>20 A. I'm pretty sure he had started by then.</p> <p>21 Again, I didn't look that up, but -- yes, he was</p> <p>22 there -- wait. She had left in May; right? Okay,</p> <p>23 yes, he was there.</p> <p>24 Q. Okay.</p> <p>25 A. Yep.</p>

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1 Q. Was there anybody besides Mr. Forster working
2 there by the summer of 2017?

3 A. No, no -- well, myself and Mr. Letofsky, we
4 were there very frequently during that time frame.

5 Q. All right. But had the firm hired
6 anyone else?

7 A. Attorney-wise, no.

8 Q. Or what about support staff-wise, to work in
9 the Las Vegas office specifically?

10 A. I don't recall when Ms. Kachermeyer started.
11 It might have been around this time frame.

12 Q. Okay.

13 A. It was probably shortly after Ms. Buchanan
14 left in May. It might have been -- is this June --
15 yeah, she might have been on, working then.

16 Q. Okay.

17 A. I think as a stopgap we found someone who was
18 a paralegal that could be trained pretty quickly. So
19 I think Ms. Kachermeyer started around that time. We
20 had handed a bunch of the files to Ms. Naleway to
21 transition and sit in the California office, but
22 Ms. Naleway couldn't perform any work on those because
23 she's not licensed in Nevada.

24 Q. Ms. Naleway, would you spell that?

25 A. N-a-l-e-w-a-y.

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1 Q. Do you have a first name for her?

2 A. Nicole.

3 Q. Nicole, okay.

4 A. So we needed somebody to be able to help
5 process, file documents and things of that nature. So
6 it would have been around this time that
7 Ms. Kachermeyer started, I'm pretty sure.

8 Q. So before we go any further, then, I want to
9 just -- we kind of started talking about the topics
10 that are roughly numbers 2 through 5 in the deposition
11 notice.

12 So at this second period, after she comes
13 back in December of 2016, she works up through into
14 May of 2017, and then goes on this what you have
15 termed an indefinite leave of absence because of her
16 health.

17 When did you stop reporting her as being an
18 employee of the firm?

19 A. What do you mean by "reporting"?

20 Q. Well, I mean -- make this Exhibit 14.
21 (Exhibit 14 was marked for identification.)

22 BY MR. KEMP:

23 Q. Exhibit 14 is plaintiff's number 10129. I
24 did see this, I think, in your disclosures as well.
25 It's "Watkins & Letofsky, LLP Company Information,"

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1 and it shows, I believe, people that are, you know,
2 working, looks like a company roster; right? And then
3 it mentions former staff members at the bottom, and
4 Amy Buchanan is listed among those former. There's no
5 date on it, so I'm not sure what the...

6 MR. ORTUNO: Yeah, I want to object just to
7 say that I don't believe this is in our disclosures, I
8 don't think I've ever seen this document before. I
9 could be mistaken, but I --

10 THE WITNESS: I don't see a date.

11 MR. ORTUNO: -- just wanted to put that out
12 there.

13 THE WITNESS: Yeah, I don't know, in terms of
14 dating.

15 MR. KEMP: I have to go back because I think
16 there was, in the supplemental initial disclosures
17 that came on November 5th, a mention of this document
18 and the date, but I'd have to go back and look for
19 sure.

20 Q. But -- so I was just wondering, based on your
21 recollection and knowledge, at what point did
22 Amy Buchanan become a former staff member?

23 A. Well, as I'm looking at this, it refers to
24 Amy reassigned as of 9/1, those are her files, "due to
25 medical reasons, refer calls to Dan." My guess is

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1 this talks about the Sean Sullivan office, so at least
2 until June of 2016.

3 So my guess is this is in reference to that
4 time period when she left in September of 2016. Some
5 of these names go way back.

6 Q. Okay. So you think this would have been
7 after -- okay. So after she resigned on 9/1?

8 A. Yeah.

9 Q. Okay. But before she would have come back?

10 A. Correct.

11 Q. Okay. All right. That explains that.

12 But do you have a similar list now that shows
13 her as being a former employee?

14 A. No. I haven't seen an updated roster in a
15 long time, and I don't think -- I'm surprised that we
16 had former employees listed there. I'm not sure why
17 we would have done that.

18 But this isn't something I prepared. I think
19 this is more of a sheet that Susan Watkins prepares
20 for her own reference related to payroll and some of
21 the payments that we had been making, things of that
22 nature. So I don't know that we have a current one
23 like this, I don't think we do, where it references
24 former employees.

25 Q. Okay. So you --

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<p>1 A. That wouldn't serve any purpose for me, so I</p> <p>2 don't have one.</p> <p>3 Q. Okay. Do you know why these -- on the former</p> <p>4 employees it's got initials. I believe "DRW" is you,</p> <p>5 "BSL" is Mr. Letofsky, and I don't know who "ED" is,</p> <p>6 but there's like -- it just mentions these.</p> <p>7 Is that who the primary supervisor was of</p> <p>8 these people? That's what it seemed like to me.</p> <p>9 A. Yeah, that's how we generally did it. I'm</p> <p>10 trying to see if there is anyone that's not --</p> <p>11 (Document review.) Oh, that's Evie.</p> <p>12 Yes, that's what it generally refers to.</p> <p>13 There were two non-attorneys in here. Evie doesn't</p> <p>14 have one listed, so she would have been supervised by</p> <p>15 both Brian and myself, Mr. Letofsky, and then Katrina</p> <p>16 McIntosh was Mr. Letofsky's secretary.</p> <p>17 So yes, that's who their direct supervisor</p> <p>18 was. I use that loosely, though, because in the</p> <p>19 context of working with associates, Mr. Letofsky can</p> <p>20 and does talk to associates working on my files to</p> <p>21 assist them in roundtables and things like that and I</p> <p>22 do the same to his, so...</p> <p>23 Q. Sure. It makes sense.</p> <p>24 A. But, yeah, in terms of who they are going to</p> <p>25 go to for the immediate question, that would be</p>	<p>1 A. No, I don't. I'm surprised. I'm looking at</p> <p>2 these. I don't remember Ms. Habibi or Everson or</p> <p>3 Mr. Na leaving before Ms. Buchanan. That's odd. So I</p> <p>4 don't know. I really have no clue.</p> <p>5 Q. Okay. I don't see Eran Forster listed here,</p> <p>6 so -- and I think my information is Mr. Forster</p> <p>7 probably started around October of 2016, like shortly</p> <p>8 after Ms. Buchanan resigned.</p> <p>9 Does that refresh your recollection? Do you</p> <p>10 remember? Before you said you couldn't remember --</p> <p>11 A. Oh, in terms of when he started?</p> <p>12 Q. Yes.</p> <p>13 A. That makes sense. If Ms. Buchanan left in</p> <p>14 September and you are telling me that you have</p> <p>15 information it's October, I wouldn't dispute that. I</p> <p>16 seem to recall that Ms. Buchanan introduced me to</p> <p>17 Mr. Forster, and that was kind of how that connection</p> <p>18 was made. So that would make sense, in her</p> <p>19 transitioning out, we met and he agreed to work for</p> <p>20 us.</p> <p>21 Q. And since he doesn't appear on the list here,</p> <p>22 I mean, it might make some sense that this was done</p> <p>23 sometime in September before he arrived in October?</p> <p>24 A. Well, I don't know if this list was intended</p> <p>25 to capture Nevada, but he's not on the list. So --</p>
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<p>1 probably a correct assignment.</p> <p>2 Q. Okay. Of the people that are listed in the,</p> <p>3 for lack of a better term, the chart or the box up</p> <p>4 here --</p> <p>5 A. Right.</p> <p>6 Q. -- are any of those people no longer working</p> <p>7 with you now?</p> <p>8 A. Mr. Mousmoules, Ms. Hagerty, Ms. Askander,</p> <p>9 Ms. Dilts, Ms. DiVincenzo, Ms. Gallardo, those have</p> <p>10 all moved on.</p> <p>11 Q. Okay. For the record I'm going to ask, do</p> <p>12 you remember when those people moved on?</p> <p>13 A. No, I don't.</p> <p>14 Q. Any of the former staff members, do you</p> <p>15 recall when any of those people left the firm?</p> <p>16 A. Sometime after Ms. Buchanan went out in</p> <p>17 September 2016, is about the best I can tell you.</p> <p>18 Q. All right. Okay. So the people that are in</p> <p>19 the box up here (indicating), they would have been</p> <p>20 after September 1st -- 2nd, 2016, actually, her</p> <p>21 resignation date.</p> <p>22 A. Okay.</p> <p>23 Q. But the people at the bottom that are listed</p> <p>24 as former staff members, do you remember when any of</p> <p>25 those people left? I don't expect you to have --</p>	<p>1 Q. But the Las Vegas office is listed and it</p> <p>2 talks about Amy and it lists Amy as a former staff</p> <p>3 member, so...</p> <p>4 A. That's true. Like I said, I don't know what</p> <p>5 the intent was. I didn't draft this.</p> <p>6 Q. Okay.</p> <p>7 A. But it would -- wouldn't surprise me if</p> <p>8 Mr. Forster came on shortly after that.</p> <p>9 Q. Okay. Amy wasn't terminated from her job for</p> <p>10 any misconduct or poor work performance, was she?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And to the extent that Amy's</p> <p>13 employment did end, what would you assign as being the</p> <p>14 reason for that?</p> <p>15 A. She needed to go get medical treatment.</p> <p>16 Q. All right. Did you consider that she</p> <p>17 resigned, or did you terminate her employment?</p> <p>18 A. Neither. We didn't terminate her at that</p> <p>19 point and I didn't sense that she was resigning. She</p> <p>20 was going to go see if she could get some treatment</p> <p>21 and figure out what was going on and work her way back</p> <p>22 into practicing law and if that was going to be a good</p> <p>23 fit going forward.</p> <p>24 Q. Okay.</p> <p>25 A. There was no -- it was an unknown. I mean,</p>

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<p>1 her last sentence in that e-mail states very clearly</p> <p>2 where we were with it, what's left for her in the</p> <p>3 future remains to be seen; that's how I felt about it</p> <p>4 when she left.</p> <p>5 Q. Right. That was on --</p> <p>6 A. Whichever one it was.</p> <p>7 Q. I think it was 12, actually.</p> <p>8 A. Yes. So when she went on leave, that last</p> <p>9 sentence "and what I can do is something to be figured</p> <p>10 out" is where we left it. Very vague.</p> <p>11 Q. All right. So from your perspective, there</p> <p>12 was no conscious decision to terminate her employment?</p> <p>13 A. Right.</p> <p>14 Q. Okay.</p> <p>15 A. Well, by me.</p> <p>16 Q. Okay.</p> <p>17 A. I don't know her thinking.</p> <p>18 Q. In terms of the firm, though.</p> <p>19 A. Yes, that's correct.</p> <p>20 Q. The firm never made a conscious decision to</p> <p>21 end her employment?</p> <p>22 A. That's correct.</p> <p>23 Q. All right. Did you have any discussions with</p> <p>24 Mr. Letofsky or the office manager, Nancy, or your</p> <p>25 wife, Susan? I can't remember what her role was</p>	<p>1 discrimination, Nevada Equal Rights Commission had,</p> <p>2 September 4, 2018.</p> <p>3 Q. Is this the charge that you were speaking</p> <p>4 about?</p> <p>5 A. Well, there was additional documents, because</p> <p>6 the EEOC made a decision on it and sent those things</p> <p>7 as well. But yes, this is part of that.</p> <p>8 Q. Right. The EEOC would have done that later.</p> <p>9 This was dual-filed with the Nevada Rights Commission</p> <p>10 and the EEOC, is my understanding of it. It's got --</p> <p>11 A. And I was using it interchangeably. There</p> <p>12 were additional documents related to this charge, but</p> <p>13 this is part of that, yes.</p> <p>14 Q. Right. This is the EEOC form 5 that they</p> <p>15 used for the formal charge of discrimination that they</p> <p>16 type up and have her sign?</p> <p>17 A. Correct.</p> <p>18 Q. There would be other documents related to the</p> <p>19 charge, certainly, but...</p> <p>20 A. You were asking me about triggers to the</p> <p>21 thought that she was no longer employed definitively,</p> <p>22 and so this would be one of those things that would</p> <p>23 come to mind.</p> <p>24 Q. Okay. Was there anything before this time?</p> <p>25 This is September 2018. So this is like a whole year</p>
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<p>1 exactly.</p> <p>2 A. Controller, basically.</p> <p>3 Q. Controller.</p> <p>4 Did you have any discussions amongst any of</p> <p>5 you all about how she is "not an employee here</p> <p>6 anymore"?</p> <p>7 A. No -- well, at any point in time I'm sure</p> <p>8 that came up after we were sued by her, I assumed it</p> <p>9 was over, and I'm sure...</p> <p>10 Q. Nothing other than that, though?</p> <p>11 A. I'm trying to piece together when the -- I</p> <p>12 don't remember the events and the chronology. There</p> <p>13 was a labor board complaint. She wanted pay. And</p> <p>14 then there was, I think, I seem to recall an EEOC</p> <p>15 complaint, I would assume by the EEOC filing.</p> <p>16 Basically, the language in that, that it was over;</p> <p>17 that would probably be when it was crystal-clear.</p> <p>18 Q. Okay.</p> <p>19 A. I don't have it in front of me, but that</p> <p>20 would be a point in time when we could have come to</p> <p>21 that conclusion.</p> <p>22 MR. KEMP: All right. Since it came up,</p> <p>23 we'll make this as an exhibit now, Exhibit 15.</p> <p>24 (Exhibit 15 was marked for identification.)</p> <p>25 MR. KEMP: So this is a charge of</p>	<p>1 after when we were talking about it, I think.</p> <p>2 A. Yeah, I don't recall when we were talking, to</p> <p>3 be honest with you.</p> <p>4 Q. Okay. Now, we moved a little bit, but</p> <p>5 September 2nd, 2017 -- '16 -- I'm sorry. Now I got</p> <p>6 myself confused.</p> <p>7 So it's in May of 2017 that she goes out on</p> <p>8 this leave.</p> <p>9 A. Uh-huh.</p> <p>10 Q. And then I understand that there was, in the</p> <p>11 fall of 2017, I think there was the labor commissioner</p> <p>12 complaint that she filed, and then we have this Nevada</p> <p>13 Equal Rights Commission, the formal charge filed</p> <p>14 September 4th, 2018. She would have gone to them</p> <p>15 before that, because it takes a while to meet with</p> <p>16 them and so forth.</p> <p>17 A. So there was a -- some communications in</p> <p>18 August of '17 as well in which she described her</p> <p>19 ability to come back at four hours.</p> <p>20 Q. Right.</p> <p>21 A. And we weren't able to do that. It was just</p> <p>22 there wasn't any way to fit that in. By that time we</p> <p>23 had a new -- another associate working, if my memory</p> <p>24 serves, and there just wasn't anyplace to put a</p> <p>25 part-time associate, because we needed, two reasons,</p>

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<p>1 one, there probably wasn't enough work, but two, we 2 wanted them to be able to handle top to bottom on the 3 file, which meant take care of all of the appearances 4 and not be a project or contract type of attorney that 5 didn't fit well with a small office. We needed full 6 management. 7 So in August we did have that discussion, and 8 I don't remember -- I think we got some doctors' notes 9 back then, and we did discuss that that probably 10 wasn't a good fit at that time. So I guess we could 11 say that would be a time where her employment ended. 12 So it was never really specifically 13 discussed. I don't remember hearing from Ms. Buchanan 14 much after August of 2017 on employment and coming 15 back to work. 16 Q. So based on what you just talked through 17 there, then you would think that her employment ended 18 as of when? 19 A. Well, I'm trying to figure out, I mean, what 20 she was thinking too, but I could see -- we never made 21 it clear "termination," I never said to her "your 22 employment is terminated." It was just she kind of 23 didn't come back to work, and that was in August when 24 we talked about her ability to come back was limited 25 to four hours. There wasn't a fit then. We had</p>	<p>1 Q. Oh, okay. So you think by November of 2017, 2 then, you would have probably taken her off because 3 she wasn't working? 4 A. Well, it makes sense by then. If we hadn't 5 had her in the office since May and August time frame, 6 when we talked about part-time didn't work and there 7 was no real bubbling up of an opportunity to come back 8 and no discussions, I can see us doing that; I would 9 assume that's what happened. I don't really handle 10 the E&O side. That goes through Ms. Letofsky; she 11 does all the add and drop forms. But that would make 12 sense if that happened in November as well. 13 Q. Okay. We made mention of a couple of things. 14 I've got doctors' notes here we're going to look at. 15 One thing, before I forget, because you 16 mentioned that you had another associate working by 17 some point, and I think you were talking about the 18 fall 2017. Who was the associate that you hired at 19 that point? 20 A. Theresa Santos, T-h-e-r-e-s-a. I didn't look 21 up her start time. It was in that fall period of 22 2017. 23 Q. Okay. Does she still work for you today? 24 A. She does. 25 Q. I know her husband.</p>
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<p>1 somebody already in place. There was nowhere to put 2 her, so there wasn't any way to get her back into 3 active employment, so it just sat and nothing happened 4 after that. 5 Q. When she came back -- going back to the fall 6 of 2016 now, she resigned September 2nd and she comes 7 back in December, and we saw an e-mail here earlier 8 where you talked about putting her back on the E&O 9 insurance. When did you take her off of the E&O 10 insurance after May of 2017 when she went on the 11 leave? 12 A. I have no idea. I did not look that up. 13 We -- that is the reason it came up, that e-mail, that 14 is the one like checklist item that's not on the 15 checklist. 16 Q. Sure. 17 A. And people stay off for a long time. They 18 get added on and we don't do the take-them-off form 19 until the next revolution of applications. That 20 happens frequently. So I -- there was never -- that's 21 probably one thing we should work on, but we leave 22 people on there a lot of times until we re-up for 23 another year. 24 Q. Do you know when your year renews? 25 A. November, I think it's November each year.</p>	<p>1 A. Cory. He's a good guy. 2 MR. KEMP: Make that 16. 3 (Exhibit 16 was marked for identification.) 4 MR. KEMP: So Exhibit 16, we've got three 5 pages. There's a note from Dr. McKinnon dated 6 July 12th, 2017; there's a note from Dr. Pfau, 7 P-f-a-u, dated July 17th, 2017; and on a prescription 8 pad, a note from Dr. Jeffrey Ziegler dated 9 August 21st, 2017. 10 Q. Do you recall receiving these before? 11 A. I do. 12 Q. Okay. Were these notes that Ms. Buchanan 13 gave you regarding her physical condition? 14 A. Yes. 15 Q. Dr. Pfau, on the second page of this, says 16 that she should be working no more than four hours per 17 day and that they expected that to continue for the 18 next six months. 19 So it does indicate that as of July 17th she 20 was able to work but just only able to work a reduced 21 schedule? 22 A. Right. 23 Q. And at that point you didn't feel that you 24 could accommodate her with a reduced schedule? 25 A. No, because it says she is unable to work,</p>

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<p>1 unable to work more than four hours a day, which means</p> <p>2 at four days a day to me it's over, if we're going to</p> <p>3 go by this and we're going to be able to really</p> <p>4 accommodate it on a part-time basis and there's just</p> <p>5 too many things that that gets in the way of in the</p> <p>6 practice of law as an associate managing a file, on</p> <p>7 top of the workload itself just in the file</p> <p>8 number that we had.</p> <p>9 Q. Okay.</p> <p>10 A. That's not to say that at some point in time</p> <p>11 in the future there might be a place for that, but it</p> <p>12 was going to always be a challenge to have somebody</p> <p>13 manage a file who may not be able to stay somewhere</p> <p>14 more than four hours. I mean, you can't walk out of a</p> <p>15 federal court ENE at the four-hour mark.</p> <p>16 Q. Okay. Now, the next note from Dr. Ziegler,</p> <p>17 which was about a month later on August 21st, it says</p> <p>18 she would do well to limit her work to 20 hours, her</p> <p>19 workweek to 20 hours. Excuse me.</p> <p>20 So that's a little bit different. It's not</p> <p>21 just 4 hours a day, but it's 20 hours a week, but by</p> <p>22 that point what was your position on being able to</p> <p>23 accommodate 20 hours per week?</p> <p>24 A. Now we're in conflicting accommodations.</p> <p>25 I've got Dr. Pfau saying six months of four hours a</p>	<p>1 A. Not from the doctors, and I didn't ask</p> <p>2 Ms. Buchanan to get it from the doctors.</p> <p>3 Q. Okay. Would that be because you just didn't</p> <p>4 feel like you could support a 20-hour-per-week</p> <p>5 part-time schedule at that point?</p> <p>6 A. I lost you. I'm sorry. I don't understand.</p> <p>7 Q. Well, my question kind of assumes that you</p> <p>8 gave it any consideration, and you might not have, but</p> <p>9 would it have made any difference? Because at this</p> <p>10 point it seems like you felt you couldn't accommodate</p> <p>11 the part-time schedule anyway, whether it was 20 hours</p> <p>12 or 4 hours a day, you know.</p> <p>13 MR. ORTUNO: Object to form.</p> <p>14 THE WITNESS: Yes, my thinking at this point</p> <p>15 was that we weren't able to do it, it wasn't a fit</p> <p>16 before, it wasn't going to be a fit at this time</p> <p>17 because it was even busier. So I didn't -- it didn't</p> <p>18 seem that that was going to work.</p> <p>19 BY MR. KEMP:</p> <p>20 Q. It was just there was so much work, she</p> <p>21 didn't work out before, having to work the reduced</p> <p>22 schedule, so it wasn't going to work going forward?</p> <p>23 A. Right. The volume of work and then the tasks</p> <p>24 that were required, having many of those exceed</p> <p>25 four hours a day, we're going to be in deposition more</p>
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<p>1 day and Dr. Ziegler saying 20 hours a week. To me,</p> <p>2 the only way to reconcile that is to keep it -- they</p> <p>3 are the same only if you keep it to four hours a day.</p> <p>4 I don't recall -- I recall receiving these,</p> <p>5 because we had talked and she was -- you know, again,</p> <p>6 it goes back. Ms. Buchanan has a desire to practice</p> <p>7 law and to be -- and her drive is there, and I'm very</p> <p>8 happy that she found a place that works. We didn't</p> <p>9 have a model as a small office that would allow for</p> <p>10 this, but she wanted to try and that's why she sent</p> <p>11 these, and where I was going is I can't remember if</p> <p>12 these came all in one e-mail or if they came</p> <p>13 separately, but it was somewhere in here -- it may</p> <p>14 have been by this August 1 that Ms. Santos had</p> <p>15 started. I don't recall if she had started in July.</p> <p>16 So I know it came with an e-mail. I just</p> <p>17 don't recall without that e-mail when they came in,</p> <p>18 but this is the more -- Dr. Pfau's accommodations the</p> <p>19 more restrictive, which would be the one that would</p> <p>20 control, from my speculative.</p> <p>21 Q. Even though the other one is later in time?</p> <p>22 A. It's later in time, but it's not consistent</p> <p>23 with Dr. Pfau, who says four hours a day.</p> <p>24 Q. Right. Okay. Did you ever ask for any</p> <p>25 clarification with these?</p>	<p>1 than four hours today, we were in her deposition far</p> <p>2 in excess of four hours that day, it would be -- I</p> <p>3 mean, it's really burdensome to ask another associate</p> <p>4 to pick up those longer events, to dive into a file</p> <p>5 they have no knowledge of and handle those. And for</p> <p>6 me, it would be extremely burdensome to just -- you</p> <p>7 know, running all over the place. So to go to an ENE,</p> <p>8 take a percipient witness depo was going to be really</p> <p>9 difficult to manage.</p> <p>10 Q. Okay. All right. So then, in terms of the</p> <p>11 actual reason -- assuming that her employment did end</p> <p>12 with you and assuming that it ended during the time</p> <p>13 period you talked about, the reason is because she</p> <p>14 couldn't work full-time and you didn't have any</p> <p>15 part-time schedule that you could give her; is that</p> <p>16 fair to say that that was the reason why it ended?</p> <p>17 A. I think that summarizes it well. There's</p> <p>18 probably more particulars to it, but yeah. I mean,</p> <p>19 we're always trying to -- you know, when we say an</p> <p>20 indefinite leave, that leaves open the idea that</p> <p>21 things change and the situation develops.</p> <p>22 So I never viewed her time with us as</p> <p>23 concretely over until -- well, I never viewed it until</p> <p>24 the later actions, but this is when I recognized at</p> <p>25 least for six months we weren't going to be able to do</p>

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<p>1 anything.</p> <p>2 Whether something after six months could</p> <p>3 develop, I would be happy to talk to her. And I was</p> <p>4 always direct with her, like I always told her that.</p> <p>5 That's why she came back and we tried it initially.</p> <p>6 So we get the letter in July, and for me, my thinking</p> <p>7 is she's not going to work for at least six months,</p> <p>8 we'll see where we're at when that happens.</p> <p>9 Q. Okay. And in terms of number 5, the identity</p> <p>10 of the people participating in this decision-making</p> <p>11 process, to the extent it was one, it seems like it</p> <p>12 was mostly you, or did Mr. Letofsky play any role? If</p> <p>13 so, what was that?</p> <p>14 A. No. All decisions --</p> <p>15 Q. A lot of questions all in one but...</p> <p>16 A. The simple answer is Mr. Letofsky and I</p> <p>17 discuss all employment-related decisions like how to</p> <p>18 handle this. We would discuss whether there was a way</p> <p>19 to handle the workflow under the reduced schedule. We</p> <p>20 talked about that. But yes, so he's involved, but I'm</p> <p>21 the one ultimately who said we can't do it.</p> <p>22 Q. Okay.</p> <p>23 A. Because I had my hands on the files. I'm</p> <p>24 trying to remember. This was an intensely busy time</p> <p>25 because the Eldorado files were cranking and we were</p>	<p>1 she was telling you?</p> <p>2 A. Oh, no, no. I mean, we saw it, Mr. Forster</p> <p>3 saw it firsthand frequently.</p> <p>4 Q. Okay. So you had discussions with</p> <p>5 Mr. Forster about what he saw her experiencing?</p> <p>6 A. Not in depth, but certainly he reported to me</p> <p>7 she's not doing well today, she's sick. We talked</p> <p>8 about that a lot, sure.</p> <p>9 Q. Okay.</p> <p>10 A. A lot in the sense that when it happened, but</p> <p>11 I didn't go into detail with him on anything like</p> <p>12 that. He didn't supervise her, had no -- didn't</p> <p>13 supervise her at all.</p> <p>14 Q. Okay. So the extent of your knowledge was</p> <p>15 what she told you up until this point and then what</p> <p>16 you got from the doctors. Anything else? Any</p> <p>17 other --</p> <p>18 A. On her medical conditions?</p> <p>19 Q. Yes.</p> <p>20 A. Correct.</p> <p>21 MR. KEMP: Okay. All right. Let's go off</p> <p>22 the record.</p> <p>23 (Recess taken.)</p> <p>24 MR. KEMP: Go back on the record.</p> <p>25 Q. I would remind you you are still under oath.</p>
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<p>1 both out here a lot and it was a very busy time.</p> <p>2 Mr. Forster was pushed to the max. It was just the</p> <p>3 way to try and get the office going.</p> <p>4 Q. Okay. Number 10 on the list talks about the</p> <p>5 facts and circumstances surrounding defendant's</p> <p>6 knowledge and understanding of plaintiff's work</p> <p>7 restrictions given by her doctors at any time during</p> <p>8 her employment.</p> <p>9 Other than these notes here, were you ever</p> <p>10 provided with any other doctors' notes that you can</p> <p>11 recall?</p> <p>12 A. No.</p> <p>13 Q. Do these notes here pretty much summarize</p> <p>14 what knowledge you had of her restrictions?</p> <p>15 A. No. Only for that point in time.</p> <p>16 Ms. Buchanan and I talked at length throughout her</p> <p>17 employment on her restrictions. She was the one</p> <p>18 relaying what she needed in terms of time at work. I</p> <p>19 didn't need to verify it from an employer until she</p> <p>20 was away because she went away to try and</p> <p>21 figure things out. At that point it felt like, well,</p> <p>22 let's see what the doctors are saying. So that's the</p> <p>23 first time we asked for notes, but I pretty much</p> <p>24 relied on her to relay to me what she wanted to do.</p> <p>25 Q. Okay. Did you have any reason to doubt what</p>	<p>1 Okay?</p> <p>2 A. Yes.</p> <p>3 Q. All right. The -- with respect to the time</p> <p>4 period in summer of 2017 when she was providing you</p> <p>5 with the doctors' notes, and I believe there was some</p> <p>6 discussion about whether or not she could come back to</p> <p>7 work four hours a day. Is that...</p> <p>8 A. I don't specifically recall that. I</p> <p>9 generally recall that we did and assume that we did.</p> <p>10 Q. Do you recall there was any discussions about</p> <p>11 perhaps hiring some other support staff that would</p> <p>12 help in basically her ability to come back to work?</p> <p>13 A. No, because it wouldn't help her on the</p> <p>14 four-hour limit.</p> <p>15 Q. Okay. Was there -- did you discuss with her</p> <p>16 possibly hiring another associate attorney that</p> <p>17 between the two of them they could kind of work</p> <p>18 together, like two part-time people, anything like</p> <p>19 that?</p> <p>20 A. No, because they still would manage a file</p> <p>21 and both would be limited then in their ability to</p> <p>22 handle four-hour-or-more issues.</p> <p>23 Q. But in terms of that, for example, with the</p> <p>24 Eldorado cases, wasn't it the case that you would have</p> <p>25 people jump in to help on those that weren't</p>

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1 necessarily running the case from top to bottom, that
 2 they were just helping out on particular aspects of
 3 the Eldorado case?
 4 A. Yes.
 5 MR. KEMP: Let's mark this next one.
 6 (Exhibit 17 was marked for identification.)
 7 MR. KEMP: So Exhibit 17 is an e-mail chain.
 8 I think some of this we might have seen before. It
 9 picks up from one we looked at before. Yeah. So the
 10 last one, I think we've seen that one, where she is
 11 talking about no autoimmune disease but it's
 12 fibromyalgia and low T3. That's the -- on this
 13 Bates stamp page 1339. And for the record, Exhibit 17
 14 is defendant's Bates stamp 1337 through 1339. And
 15 then we mentioned that there were -- there was a
 16 response to that, and that we find that here, the
 17 June 29th e-mail that's in the middle of 1438.
 18 Q. Looks like you responded to her. It says:
 19 "Hey, Amy. Thanks for the update.
 20 Sorry to hear about the continuing pain.
 21 Good news re autoimmune disease not being a
 22 problem. As for work, I would recommend you
 23 speak with your healthcare providers over the
 24 next visits and ask them what they think
 25 would be appropriate in terms of hours and

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1 the type of work and let me know what
 2 restrictions they believe are appropriate and
 3 we can go from there. How does this sound?
 4 Thanks, Dan."
 5 Did I read that right?
 6 A. Yes.
 7 Q. And she responded on July 8th, 2017, at 2:45
 8 p.m.:
 9 "Hi, Dan. I've requested letters to
 10 provide for an accommodation request. I'll
 11 provide them to you once I have them."
 12 Did I read that right?
 13 A. Yes.
 14 Q. Do you actually remember writing the
 15 June 29th e-mail and getting the July 8th response
 16 from her?
 17 A. I don't specifically recall that, but I
 18 generally recall it. I don't recall typing it and
 19 receiving it and all that, but I recall that it
 20 occurred.
 21 Q. You don't have any doubt it's authentic?
 22 A. Oh, no.
 23 Q. Okay. And so that appears to maybe be what
 24 led to the doctor's note that we have in Exhibit 16
 25 that you provided?

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1 A. Right.
 2 Q. She responds then again on August 14th, 6:55
 3 p.m.:
 4 "I've attached two letters. I'm still
 5 waiting for letters from my other medical
 6 providers despite my multiple requests.
 7 Meanwhile here are links to recommended
 8 accommodations from the Job Accommodation
 9 Network re employees such as myself with
 10 chronic pain, fibromyalgia and migraines."
 11 So then that that I just read is at the top
 12 of 1338. Did I read that right?
 13 A. Yes.
 14 Q. Do you recall receiving this e-mail with the
 15 links that she provided?
 16 A. That I recall, uh-huh.
 17 Q. Did you look at the links?
 18 A. I did.
 19 Q. Did you consider the accommodations that were
 20 recommended by the Job Accommodation Network?
 21 A. I reviewed them. I don't know what you mean
 22 by "considered." They didn't seem to work in the
 23 context of what work we needed done.
 24 Q. My question is whether you looked at them,
 25 considered them, and apparently rejected them because

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1 they --
 2 A. Well, it wasn't a doctor's note either. So I
 3 guess, if you are saying did I consider them, did I
 4 process the information, I did do that, yes.
 5 Q. Well, there is indication that she had
 6 attached some -- these two letters --
 7 A. Right.
 8 Q. -- which I guess might be the July 12th and
 9 the July 17th, but of course, by that point, August
 10 14th, she didn't have the third one here from
 11 Dr. Ziegler --
 12 A. Right.
 13 Q. -- because that was dated the 21st.
 14 A. So the letters would be controlling over the
 15 websites, is what I was suggesting.
 16 Q. Okay. Did you contact her back and speak
 17 with her about -- well, it looks like you did, if we
 18 go to the next e-mail, August 16th. It's from you to
 19 Amy, August 16th at 5:44 p.m.:
 20 "Thank you for the update. I hope you
 21 are doing well. I reviewed the documents and
 22 websites. Thank you. Question - are you
 23 requesting to return to work at four hours a
 24 day? I recall you indicating in our previous
 25 conversations that you did not want to work

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<p>1 limited hours. I'm driving out to Vegas 2 tonight. We can talk tonight if that works. 3 Call me on my cell." And there is the 4 number. "Or we can discuss Thursday or 5 Friday. Let me know what works. Thanks." 6 Did I read that right? 7 A. You did. 8 Q. Okay. Did you actually speak with her 9 directly after that e-mail? You were talking about 10 speaking with her that night. 11 A. I don't recall. 12 Q. Do you recall what the website suggested 13 after you -- 14 A. No. 15 Q. Okay. She then responds -- this is 17 16 August 2017, 16:05: 17 "Hi, Dan. I sent you a text. I'm 18 confused as to me not wanting to work 19 limited hours as I've requested a part-time 20 schedule from the time I returned to the firm 21 and I would notify you if my hours could 22 increase health permitting. I started with 23 Monday through Thursday, 5 hours a day and 24 then agreed to 9:00 a.m. to 5:00 p.m. 25 starting on March 1st. Unfortunately, my</p>	<p>1 And that goes back to where she was, even 2 though she was on the part-time reduced schedule 3 before, she couldn't get everything done in time and 4 she was ending up working more hours. Is that your 5 understanding of what she's talking about? 6 MR. ORTUNO: Objection. Assumes evidence not 7 in the testimony. 8 THE WITNESS: Can you read the question back. 9 (Record read by reporter as follows: 10 "QUESTION: Okay. She says, 'My concern 11 is whether this is possible as I was 12 consistently working additional hours.' 13 "And that goes back to where she was, 14 even though she was on the part-time reduced 15 schedule before, she couldn't get everything 16 done in time and she was ending up working 17 more hours. Is that your understanding of 18 what she's talking about?") 19 THE WITNESS: Her concern, is that what you're 20 talking about? 21 BY MR. KEMP: 22 Q. Right, her concern. 23 A. Yes, I think it was her concern. 24 Q. Okay. And it was true that she was having to 25 work additional hours because she couldn't get</p>
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<p>1 health was not improved, and my doctors 2 recommend I work part-time, preferably 3 20 hours per week for the time being. My 4 concern is whether this is possible as I was 5 consistently working additional hours." 6 Did I read that correctly? 7 A. Yes. 8 Q. Okay. So it looks like she's asking to work 9 the reduced schedule; is that fair to say? 10 MR. ORTUNO: Objection. Calls for 11 speculation. 12 MR. KEMP: Let me rephrase the question. 13 Q. Did you understand this e-mail from her -- 14 let me back up. 15 Did you receive this e-mail from her? 16 A. Yes. 17 Q. All right. When you read the e-mail, was it 18 your understanding that she was asking to work a 19 part-time schedule and that was in response to your 20 questions whether or not she was asking for four hours 21 a day? 22 A. Yes. 23 Q. Okay. She says, "My concern is whether this 24 is possible as I was consistently working 25 additional hours."</p>	<p>1 everything done and -- 2 A. What do you mean by "having to"? 3 Q. Well, as an attorney, you have to accomplish 4 the work; right? You have to get things finished. 5 And she wasn't able to finish it in the time period 6 that was provided. That would seem to be a problem, a 7 recurring problem, was it not? 8 MR. ORTUNO: Object to form. 9 THE WITNESS: I still don't know what you 10 mean by "have to get it done" and when you say "the 11 work" that is pretty broad to the entire working of a 12 file. So I'm not sure I'm following you. 13 BY MR. KEMP: 14 Q. Okay. The work of practicing law, working on 15 a file, representing a client, there are tasks that 16 have to be done. Are you with me so far? 17 A. Yes. 18 Q. Okay. And the concern was that she was not 19 able to accomplish the tasks that had to be done to 20 represent the client and work the file in the time 21 that she was working. That was her concern; right? 22 MR. ORTUNO: Objection. 23 THE WITNESS: No, it was a general, both of 24 our concerns, yes. 25 //</p>

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<p>1 BY MR. KEMP:</p> <p>2 Q. Okay.</p> <p>3 A. The tasks associated with the file</p> <p>4 management, yes.</p> <p>5 Q. Because rather than sticking to the time</p> <p>6 period that she was supposed to be working, the</p> <p>7 20 hours a week, she was working in excess of that?</p> <p>8 A. She did do that, yes.</p> <p>9 Q. Okay. And so that's what she's expressing.</p> <p>10 It might not be possible to limit it to the 20 hours</p> <p>11 because when she was trying to do it before, it wasn't</p> <p>12 working out; right?</p> <p>13 MR. ORTUNO: Objection. Calls for</p> <p>14 speculation.</p> <p>15 THE WITNESS: You mean in trying to do the</p> <p>16 work within the limited time that she was allowed to</p> <p>17 work?</p> <p>18 BY MR. KEMP:</p> <p>19 Q. Right.</p> <p>20 A. That's correct.</p> <p>21 Q. She wasn't able to do that. That was --</p> <p>22 A. Correct.</p> <p>23 Q. -- an ongoing concern, that if she came back</p> <p>24 and agreed to the 20 hours, that she would end up</p> <p>25 working more time. Was that your understanding of</p>	<p>1 extra hours as a requirement from us. I don't know if</p> <p>2 you understand that distinction, but maybe it's not</p> <p>3 clear.</p> <p>4 The conversation I was referring to there was</p> <p>5 that we had talked a lot about this. The accident</p> <p>6 leading to these problems when she's trying to start</p> <p>7 up her career and how to manage that, and she was very</p> <p>8 frustrated, and she didn't want to work limited hours</p> <p>9 because she wanted to work full-time hours and</p> <p>10 limited hours didn't allow her to do all the things</p> <p>11 she could do if she worked full-time hours. So that's</p> <p>12 what we were talking about. It was her frustration</p> <p>13 there.</p> <p>14 And that's what I'm referring to when she</p> <p>15 says that she wasn't -- she was frustrated by having</p> <p>16 to work only four hours a day. So that's what I was</p> <p>17 referring to. And then -- yeah, so that's what I was</p> <p>18 referring to in response to her statement, and then</p> <p>19 where she says she's confused as to not wanting to</p> <p>20 work.</p> <p>21 Q. She was requesting it, that's what she says</p> <p>22 in the next part of that sentence, that she was</p> <p>23 requesting a part-time schedule.</p> <p>24 A. Oh, sure. No. That's my point. She was</p> <p>25 requesting a part-time schedule, but we had previously</p>
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<p>1 what she was talking about here?</p> <p>2 MR. ORTUNO: Again objection. Calls for</p> <p>3 speculation.</p> <p>4 THE WITNESS: No.</p> <p>5 BY MR. KEMP:</p> <p>6 Q. No. What was your understanding?</p> <p>7 A. Her concern was that -- wasn't that she had</p> <p>8 to work more time. It's that she couldn't fulfill the</p> <p>9 requirements of the job, which were attending depositions,</p> <p>10 doing those things, working up a file.</p> <p>11 So when she says, "I'm confused as to what --</p> <p>12 as to me not wanting to work limited hours," what she</p> <p>13 had repeatedly stated goes back to her frustration</p> <p>14 that focus, fatigue, migraines, concentration were</p> <p>15 limited and that was limiting her ability to do all</p> <p>16 the things that were necessary on the file.</p> <p>17 She had to -- supposed to limit it to</p> <p>18 four hours. She chose not to do that. We never told</p> <p>19 her to work past those four hours, in an effort</p> <p>20 through that drive to try and get things done.</p> <p>21 So the concern wasn't that it was more from a</p> <p>22 production perspective. She was concerned that in the</p> <p>23 limited time she wouldn't be able to do all of the</p> <p>24 tasks necessary on the file as opposed to being</p> <p>25 concerned that, going back, she would have to work</p>	<p>1 talked about the frustration that that presented for</p> <p>2 her. In addition to the fact that we couldn't get</p> <p>3 everything done, it was very frustrating for her to</p> <p>4 work part-time. We had this conversation a lot,</p> <p>5 because she wanted to be able to do more, but she</p> <p>6 couldn't because of the fatigue and all of those</p> <p>7 things.</p> <p>8 So I was asking, "Are you asking me to go</p> <p>9 back to the frustrational situation you were in</p> <p>10 before? That's what I'm not tracking. Is that what</p> <p>11 you are asking me to do?" That's how I was thinking</p> <p>12 about it. Like, she wants to go back to what she</p> <p>13 knows wasn't workable. I wanted clarification, is</p> <p>14 that what you are asking me with these doctors' notes?</p> <p>15 Because she just sent me the notes. She didn't say</p> <p>16 anything about that at the time.</p> <p>17 So I was clarifying, "Are you wanting to do</p> <p>18 what the doctors' notes are saying, which is limited</p> <p>19 to four hours a day?" The reason I was asking that is</p> <p>20 because we had talked previously about how that was a</p> <p>21 frustrating and hard time for her, and it seemed -- I</p> <p>22 wanted to make sure she really wanted to go back to</p> <p>23 that because I didn't think she would want to, if that</p> <p>24 makes sense.</p> <p>25 Q. Somewhat, but I'm a little confused because</p>

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<p>1 she clearly seems to be saying the doctor said I can</p> <p>2 work 20 hours per week, which indicates that she wants</p> <p>3 to do that, but then she says the concern is whether</p> <p>4 or not it's possible.</p> <p>5 A. Right.</p> <p>6 Q. Because she was consistently working</p> <p>7 additional hours before.</p> <p>8 A. Right.</p> <p>9 Q. So again --</p> <p>10 A. Hence her frustration. So her concern is her</p> <p>11 frustration in the situation of having to work</p> <p>12 additional hours to complete all of the tasks but not</p> <p>13 being able to accomplish that, and so I was asking for</p> <p>14 clarification, are you asking to go back to that</p> <p>15 situation.</p> <p>16 Q. And we may be talking about the same thing.</p> <p>17 She's basically saying all of the work that you are</p> <p>18 going to want me to do I can't accomplish in the time</p> <p>19 period because I couldn't do it before and ended up</p> <p>20 working more hours, and so that seems to be the issue,</p> <p>21 is that what you would have wanted her to do and</p> <p>22 accomplish couldn't be done in the limited time.</p> <p>23 A. What the position required was more than she</p> <p>24 was able to do, and we could learn that through the</p> <p>25 previous experience, and that's why I was wondering</p>	<p>1 A. So support staff is not going to help her</p> <p>2 conduct a depo, so that's not a fix. I know the</p> <p>3 part-time associate doesn't help her when she's at an</p> <p>4 ENE or a depo or he's she's got a deadline and she</p> <p>5 can't meet it because she's got to leave, so -- and we</p> <p>6 can't have a situation where other associates are</p> <p>7 picking up those pieces of the file management. It's</p> <p>8 not efficient and congruent at all.</p> <p>9 So to the extent that we talked, it was</p> <p>10 probably brief. In my mind, I did not see that as a</p> <p>11 fix. It wasn't a fix. A paralegal can't draft a</p> <p>12 pleading, not many, can't evaluate medical records or</p> <p>13 other records and do summaries and things of that</p> <p>14 nature.</p> <p>15 In a purely transactional world maybe</p> <p>16 four hours a day works, but not in an appearance-based</p> <p>17 litigation practice, and we couldn't have deadlines</p> <p>18 get passed off at the last minute because it couldn't</p> <p>19 get done in the four-hour block allotted that day.</p> <p>20 So those were the limitations to staff and</p> <p>21 other part-time employees.</p> <p>22 Q. Okay. I just want to clarify a couple of</p> <p>23 things you said.</p> <p>24 In my experience -- this is my experience in</p> <p>25 doing ENes -- they do sometimes and very rarely do</p>
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<p>1 why you want to go back to that.</p> <p>2 Q. Okay.</p> <p>3 A. That was only half of the equation.</p> <p>4 The other half was, practically speaking,</p> <p>5 whether it would even work, and I didn't think it</p> <p>6 would.</p> <p>7 Q. Well, and then that comes back to -- I asked</p> <p>8 you this. I think you said you didn't recall.</p> <p>9 She I think would -- I'm going to represent</p> <p>10 to you that I think she would testify that she spoke</p> <p>11 to you about having another associate and maybe a</p> <p>12 part-time associate or a support staff person that</p> <p>13 would help in getting the work done, would permit her</p> <p>14 to work these reduced hours that her doctors were</p> <p>15 requesting. I think you said you didn't believe that</p> <p>16 those conversations took place?</p> <p>17 A. I don't remember saying that. She just</p> <p>18 testified to it a few weeks ago or whatever it was. I</p> <p>19 don't recall saying I don't remember that.</p> <p>20 Q. I thought, when I asked you just a little bit</p> <p>21 ago, you said no, she never talked to me about</p> <p>22 bringing on support staff or another associate.</p> <p>23 A. I don't know if that's how the question was</p> <p>24 phrased, but regardless, we can clarify it here.</p> <p>25 Q. Okay.</p>	<p>1 they go beyond three or four hours, and in terms of</p> <p>2 depositions, I mean, as an accommodation you could</p> <p>3 split depositions up into two different sessions. You</p> <p>4 can do that stuff, can't you? Is there any reason why</p> <p>5 you couldn't -- I would think that some of the</p> <p>6 magistrate judges, if you told them, look, because of</p> <p>7 my disability I can only go this long, that they would</p> <p>8 accommodate that?</p> <p>9 MR. ORTUNO: Objection. Calls for</p> <p>10 speculation.</p> <p>11 BY MR. KEMP:</p> <p>12 Q. My question is just whether or not --</p> <p>13 A. First of all, I don't want to show up and ask</p> <p>14 a federal judge, based on that, to break it up and</p> <p>15 have a second session on an ENE, I don't think. But</p> <p>16 door to door I have a different experience than you do</p> <p>17 in terms of ENE time. So door to door I'm very rarely</p> <p>18 back in four hours, and so --</p> <p>19 Q. In Nevada?</p> <p>20 A. Oh, sure. I mean, I don't go there and</p> <p>21 just -- we go there to try and resolve cases. I'm</p> <p>22 there till noon frequently. And I'm talking door to</p> <p>23 door. But that's just one experience. Most</p> <p>24 depositions that I'm involved in in the employment</p> <p>25 setting of parties, they are in excess of four hours.</p>

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<p>1 Door to door they are in excess of five or six hours.</p> <p>2 So -- but beyond that, handing over -- most</p> <p>3 of the time you don't want to split a depo. I don't</p> <p>4 want to take the deposition of a party to end it, to</p> <p>5 let them go back, reset and come back. That's not a</p> <p>6 very good tactical way to do things either, and you</p> <p>7 can't have another associate do it.</p> <p>8 And if you are breaking things up like that,</p> <p>9 then the schedule gets too convoluted and it's very</p> <p>10 difficult to manage. We could just not had success</p> <p>11 with part-time, new associates part-time.</p> <p>12 Q. I understand what you are saying. From a</p> <p>13 tactical standpoint and from a matter of preference</p> <p>14 and a matter of what would be ideal or best --</p> <p>15 A. No, that's not even that.</p> <p>16 Q. -- all of that, all of that what you said,</p> <p>17 but in terms of, you know, needing to accommodate</p> <p>18 somebody because they have a disability, you could do</p> <p>19 some of these things, couldn't you?</p> <p>20 A. No, not -- I never couched those solutions as</p> <p>21 the best result. That's what's needed. So four hours</p> <p>22 a day, four days -- four hours a day is not doable in</p> <p>23 the litigation practice that we had. It's just not.</p> <p>24 I've practiced 28 years. You may have more years than</p> <p>25 me and you may have a different type of practice. But</p>	<p>1 expected of it. The doctor tells me in no uncertain</p> <p>2 terms it's four hours a day for six months, and we had</p> <p>3 previously had this discussion with her about what she</p> <p>4 could do in the day and she had worked a four-hour</p> <p>5 day. So --</p> <p>6 Q. And the other doctor talks about a workweek</p> <p>7 of 20 hours, so that begs the question, can the time</p> <p>8 be split up, does it need to be only four hours a day,</p> <p>9 and what I gather is you never asked her and you never</p> <p>10 asked the doctors?</p> <p>11 A. I did not ask the doctors, and I relied on</p> <p>12 Dr. Pfau's letter, which in conjunction with the</p> <p>13 second letter said four hours per day, which was</p> <p>14 consistent with previous statements that she had made</p> <p>15 to me in terms of limiting exposure to concentration,</p> <p>16 focus on documents, focus in depositions and all of</p> <p>17 those things, because it triggers the fatigue,</p> <p>18 headaches, migraines, et cetera.</p> <p>19 Q. Okay. And so Dr. Ziegler's note came in</p> <p>20 after the discussions that are here in Exhibit 17?</p> <p>21 A. I don't know when that came in. It's not</p> <p>22 part of the e-mail that was referred to in Exhibit 17,</p> <p>23 that I can tell.</p> <p>24 Q. Right, no, she said she was still waiting for</p> <p>25 one, and she got this.</p>
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<p>1 I have never seen that type of time/work handled --</p> <p>2 I'd have to find two people; first of all, I've got to</p> <p>3 get two part-time people. Finding a part-time</p> <p>4 attorney is extremely difficult, someone that just</p> <p>5 wants to work four hours a day, to back-end that.</p> <p>6 It's just -- you know, we had one other</p> <p>7 attorney and a lot of files, and myself and</p> <p>8 Mr. Letofsky, it's not doable, it's not reasonable. I</p> <p>9 can't have depositions get kicked out, meetings missed.</p> <p>10 Just too hard to manage. We're too small. We're too</p> <p>11 small to do it.</p> <p>12 Q. And I assume that you never posed any</p> <p>13 questions to her medical providers or asked her to</p> <p>14 pose medical questions to the medical providers about</p> <p>15 whether or not there would be any exceptions so that</p> <p>16 like if I've got to do a deposition for seven hours,</p> <p>17 can I do that on one day, if I then kind of reduce my</p> <p>18 time for the rest of the week, no for lack of a better</p> <p>19 term interactive process like that took place, did it?</p> <p>20 A. I disagree. With the use of the word</p> <p>21 interactive process, I think that...</p> <p>22 Q. You did ask the doctors whether or not there</p> <p>23 was flexibility --</p> <p>24 A. I don't think that you can ask that and then</p> <p>25 throw in interactive process as some kind of that's</p>	<p>1 A. It's attached to your exhibit, but I don't</p> <p>2 see it attached to an e-mail.</p> <p>3 Q. Okay. I thought you testified earlier that</p> <p>4 you had seen it.</p> <p>5 A. I recall the notes in general. I don't --</p> <p>6 I've seen that, and I don't know -- it's not attached</p> <p>7 here, so I don't know if I saw it as part of the --</p> <p>8 your disclosures or where I saw it. I have seen it.</p> <p>9 I just don't recall in the timeline of things and,</p> <p>10 according to the e-mails, I don't know when it came</p> <p>11 in.</p> <p>12 Q. You are saying you can't -- you don't know</p> <p>13 whether or not you saw this in August or September of</p> <p>14 2017?</p> <p>15 A. I don't know.</p> <p>16 Q. Dr. Ziegler's note on his prescription pad.</p> <p>17 A. I don't know that I saw it in those time</p> <p>18 periods without referencing this, but it doesn't</p> <p>19 change my thinking that she's limited to four hours a</p> <p>20 day for six months.</p> <p>21 Q. But my question was -- I think you've</p> <p>22 answered it -- you never talked to the doctors about</p> <p>23 it?</p> <p>24 A. No. I wouldn't talk to them. I don't think</p> <p>25 I have a right to talk to them. It would be her job</p>

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<p>1 to talk to them.</p> <p>2 Q. You never asked her to talk to her doctors</p> <p>3 about any flexibility in this?</p> <p>4 A. Correct.</p> <p>5 MR. KEMP: All right. What time have we got</p> <p>6 here? We'll take a break.</p> <p>7 (Lunch recess at 2:29 p.m.)</p> <p>8 //</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 would be successful, and the accommodation requested</p> <p>2 was the limited time, so we engaged in that</p> <p>3 back-and-forth and what that would look like.</p> <p>4 We continued to engage in that conversation</p> <p>5 related to increasing to 80 percent. We continued in</p> <p>6 that conversation when she indicated that she needed</p> <p>7 to take a step back and go see about what -- getting</p> <p>8 things, you know, situated.</p> <p>9 We had that conversation in August when she</p> <p>10 indicated that she wanted to kind of go back to the</p> <p>11 situation which we had already established was not</p> <p>12 very workable but we talked about it then.</p> <p>13 We talked about it on a very regular basis</p> <p>14 with respect to her needing to leave work or having</p> <p>15 time off from work to accommodate migraines, fatigue,</p> <p>16 lack of concentration, doctors' appointments, all of</p> <p>17 those things.</p> <p>18 So we had a long and many conversations about</p> <p>19 her medical condition and how to best -- how to put</p> <p>20 her into the best position to succeed at work.</p> <p>21 Q. Okay. And --</p> <p>22 A. And that's a summary. I don't want to be</p> <p>23 held to that. There's probably others, but that's a</p> <p>24 summary.</p> <p>25 Q. That's fine. I think we talked about a lot</p>
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<p>1 Las Vegas, Nevada; February 20, 2020</p> <p>2 3:09 P.M.</p> <p>3 Afternoon Session</p> <p>4</p> <p>5 MR. KEMP: Let's go back on the record.</p> <p>6</p> <p>7 EXAMINATION (CONTINUING)</p> <p>8</p> <p>9 BY MR. KEMP:</p> <p>10 Q. Picking back up to where we were at</p> <p>11 topic number 11, and this has to do with, do you feel</p> <p>12 that you had an interactive process with Ms. Buchanan</p> <p>13 about accommodations?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And so what all do you consider to be</p> <p>16 the communications that were part of the interactive</p> <p>17 process? I know we've probably talked about a</p> <p>18 number of them, but did you --</p> <p>19 A. Probably most of them. We discussed, when</p> <p>20 she left in September of 2016, the fact that she</p> <p>21 needed to go, and we discussed even before that the</p> <p>22 nature of her medical condition as it impacted her</p> <p>23 work, and then she left to go get some treatment.</p> <p>24 When she came back, we discussed trying to</p> <p>25 work her back in on a limited basis to see if that</p>	<p>1 of it. I just kind of wanted to go back. I had</p> <p>2 gotten ahead of myself in the outline just a little</p> <p>3 bit.</p> <p>4 A. Sure.</p> <p>5 Q. So I just wanted to come back and see if</p> <p>6 there was anything else about interactive process that</p> <p>7 you can recall at this point that we haven't</p> <p>8 discussed, and I think you have kind of --</p> <p>9 A. I don't know if I -- on this last thing in</p> <p>10 August, we discussed, you and I here at the end, about</p> <p>11 what's reasonable in terms of accommodating a short</p> <p>12 schedule.</p> <p>13 And we had conversations or at least one</p> <p>14 conversation, Ms. Buchanan and I, about how previously</p> <p>15 that hadn't worked and I wasn't sure that going back</p> <p>16 to that was going to work. We already experienced it</p> <p>17 and we already realized it was not doable. So that</p> <p>18 was part of those conversations as well.</p> <p>19 Q. Okay. And on her end of it she sent you</p> <p>20 those links from the websites from the Job</p> <p>21 Accommodation Network. And I can't remember. I think</p> <p>22 you disputed whether or not she talked to you about</p> <p>23 additional support staff or some other help that</p> <p>24 would --</p> <p>25 A. I think I disputed whether it was reasonable</p>

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<p>1 to bring in support staff as an accommodation, but I</p> <p>2 don't dispute -- I don't remember talking about it,</p> <p>3 but I don't dispute that we talked about getting staff</p> <p>4 that would certainly be part of the progression of</p> <p>5 establishing an office.</p> <p>6 Q. Okay.</p> <p>7 A. And we had many conversations about the flow</p> <p>8 of firm development. We were new to Nevada and we</p> <p>9 needed cases, and you can't really control that and</p> <p>10 it's not like hiring a staff member is just something</p> <p>11 you do. You have got to have resources for it and</p> <p>12 funding and be able to bring in a monthly salary for</p> <p>13 that person and an income. All of those things need</p> <p>14 to be in place before you can do that.</p> <p>15 Same thing with buying -- getting another</p> <p>16 associate or what have you. You have got to have</p> <p>17 logistics to manage or to push that forward too, and</p> <p>18 so we talked about that.</p> <p>19 And her place in developing a new office, it</p> <p>20 wasn't like she came in with an established firm with</p> <p>21 a set protocol and set ways of doing things.</p> <p>22 So in terms of accommodation, we were always</p> <p>23 talking about managing the office, staffing, things</p> <p>24 like that too, because we certainly weren't here for</p> <p>25 the short-term just to have one associate. So that</p>	<p>1 BY MR. KEMP:</p> <p>2 Q. Pretty much it's office work; right? It's</p> <p>3 not like hard physical labor, just for the record. I</p> <p>4 think it's pretty obvious but --</p> <p>5 A. It's not manual labor, but if you are -- I</p> <p>6 think physical is an interesting term in litigation.</p> <p>7 I'm sure you've had many nights where you are just</p> <p>8 completely physically wiped out, and all you've done</p> <p>9 is read papers all day. So I think that there's a</p> <p>10 blending of physical and mental and emotional</p> <p>11 exhaustion.</p> <p>12 Q. Let me rephrase it. It's not physical tasks,</p> <p>13 like there's not heavy lifting, you don't have to be</p> <p>14 able to run five miles. That was more of what I was</p> <p>15 talking about.</p> <p>16 A. Correct.</p> <p>17 Q. You will get physically tired from the mental</p> <p>18 aspects of the work, sure.</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 A. And that was part of the issue with</p> <p>22 Ms. Buchanan, is -- I don't know -- I've never</p> <p>23 experienced the things she was experiencing, and so</p> <p>24 there was, in managing your files and working</p> <p>25 four hours, if you are in there and you just become</p>
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<p>1 was always part of the discussion.</p> <p>2 Q. Okay. All right. I think, number 12 we</p> <p>3 touched on a little bit, but what do you consider to</p> <p>4 be the essential functions of an associate attorney's</p> <p>5 position with your firm?</p> <p>6 MR. ORTUNO: Objection as it calls for a</p> <p>7 conclusion of law.</p> <p>8 But go ahead.</p> <p>9 THE WITNESS: Well, the simplest way to say</p> <p>10 it is you have to manage the files. That's the way I</p> <p>11 say it. Within that comes completing discovery,</p> <p>12 written and depositions, attending settlement</p> <p>13 conferences, attending mediations, arbitrations,</p> <p>14 trials if necessary, pretty much litigating the file</p> <p>15 front to back.</p> <p>16 I mean, we encourage our associates to do</p> <p>17 that. I think it's the best way to develop as an</p> <p>18 associate and as a litigator. So we want associates</p> <p>19 on front to back, and all the essential tasks would be</p> <p>20 completing the investigative and discovery process of</p> <p>21 a file and then settling it and all the steps you've</p> <p>22 got to do. So it's not like it's a mechanic, it's got</p> <p>23 five essential things you do. I mean, to me, it's a</p> <p>24 pretty broad thing.</p> <p>25 //</p>	<p>1 physically exhausted on top of mentally tired and</p> <p>2 you're -- so we were trying to figure that out. I</p> <p>3 didn't have a formula, by any stretch, and I don't</p> <p>4 think she did either, and the whole point was to try</p> <p>5 and see if we could make it work.</p> <p>6 Q. Now -- I lost my train of thought. Give me a</p> <p>7 second.</p> <p>8 Oh. The restrictions that are doctor</p> <p>9 imposed, none of that said that she couldn't do any of</p> <p>10 the actual work. It was just a limitation on the</p> <p>11 amount of time she could spend doing it. Do I have</p> <p>12 that right?</p> <p>13 A. I would state it differently. I think they</p> <p>14 did put a limitation on the work that she could do.</p> <p>15 As to the specific tasks, they didn't say she can't</p> <p>16 ask questions at a deposition or write or type</p> <p>17 interrogatories or things like that.</p> <p>18 Q. I'm talking in terms of essential functions.</p> <p>19 I mean, doing that particular work, they just limited</p> <p>20 it to a certain amount of time?</p> <p>21 A. The restrictions were time performing the</p> <p>22 functions, yes.</p> <p>23 Q. Okay.</p> <p>24 A. Or tasks.</p> <p>25 Q. Okay. And number 13, so I think that kind of</p>

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<p>1 covers 13. It's not that she couldn't perform the</p> <p>2 functions. There was a limitation on how long she</p> <p>3 could perform the functions for. Do I have that</p> <p>4 right?</p> <p>5 A. See, to me, performing a function of a</p> <p>6 deposition is start to finish. So she wasn't limited</p> <p>7 in the ability to ask questions, but the ability to</p> <p>8 sit and think through and manage documents and go an</p> <p>9 extended period, she was limited. And to me, that's</p> <p>10 the function of a deposition.</p> <p>11 Q. Are you of the position, then, that anyone</p> <p>12 that has a 4-hour per day or 20-hour per week time</p> <p>13 limit on their work is not capable of performing the</p> <p>14 essential functions of an attorney?</p> <p>15 A. No. It was the impact of the work -- it was</p> <p>16 the impact of her medical condition on her work, the</p> <p>17 fatigue, the headaches, the inability to concentrate</p> <p>18 and all those things that limited her ability to</p> <p>19 complete the tasks start to finish.</p> <p>20 And the way that they managed it was to say</p> <p>21 you are limited to four hours a day of that type of</p> <p>22 mental gymnastics.</p> <p>23 Q. Right. So then would it be your position,</p> <p>24 then, that she wouldn't be able to perform as an</p> <p>25 associate attorney anywhere, or just at your firm?</p>	<p>1 similar scenario of a satellite or a new start-up</p> <p>2 company with one associate and then two, trying to</p> <p>3 litigate files and having to manage your files on your</p> <p>4 own start to finish could not be done by a part-time</p> <p>5 associate at four hours a day five days a week who was</p> <p>6 very inexperienced as a lawyer in the beginning.</p> <p>7 So the function of a depo for a new associate</p> <p>8 is much more difficult than the function of you taking</p> <p>9 a deposition. So you can't just say she can't work</p> <p>10 anywhere, but in that office, with two attorneys,</p> <p>11 myself and Mr. Letofsky, and having to manage start to</p> <p>12 finish on her files, it was not doable under -- with</p> <p>13 her medical conditions, limiting it to four hours a</p> <p>14 day.</p> <p>15 Q. How many cases was she the sole attorney from</p> <p>16 your firm that was attorney of record in a case?</p> <p>17 A. I don't know off the top. It changed from</p> <p>18 time to time, but I don't know.</p> <p>19 Q. My experience when I look at firms including</p> <p>20 my own, when you have an associate, you usually put a</p> <p>21 partner or somebody else, you have two attorneys on</p> <p>22 the case as attorneys of record. Was that how you</p> <p>23 worked it, or was she really by herself on the cases?</p> <p>24 A. I don't recall all of the pleadings, but the</p> <p>25 typical way I recall us doing it was I was with her on</p>
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<p>1 A. I don't know what you mean by "perform as an</p> <p>2 associate."</p> <p>3 Q. Well, performing the essential functions.</p> <p>4 The essential functions from your position is that she</p> <p>5 has to be able to do something start to finish. So if</p> <p>6 she was in federal court, she's got to be able to do</p> <p>7 one full day of seven hours of deposition, and if she</p> <p>8 can't do that, then she's not capable of being an</p> <p>9 attorney at all?</p> <p>10 A. No. She's clearly found a good fit in terms</p> <p>11 of the requirements of her job duties at her current</p> <p>12 employer.</p> <p>13 Q. Okay. So it would just be at your -- the job</p> <p>14 as it existed at your firm?</p> <p>15 A. No, I don't think it's limited to my firm at</p> <p>16 all.</p> <p>17 Q. Okay. How would you say it, then? What jobs</p> <p>18 do you think that she wouldn't be able to do?</p> <p>19 A. I would be speculating. I've never done any</p> <p>20 research or looked into that at all. Outside of my</p> <p>21 office?</p> <p>22 Q. Yeah. I thought you just told me that you</p> <p>23 thought there would be other jobs, and I was asking</p> <p>24 you what those would be.</p> <p>25 A. You mean a specific law firm? I think a</p>	<p>1 files.</p> <p>2 Q. So there were then at least generally two</p> <p>3 attorneys assigned to a file, to a case?</p> <p>4 A. Depending on what you mean "assigned," but</p> <p>5 yeah, there was two attorneys on the file.</p> <p>6 Q. Okay.</p> <p>7 A. Myself and whatever associate was working the</p> <p>8 file.</p> <p>9 Q. Not all depositions are more than four hours,</p> <p>10 are they?</p> <p>11 A. No.</p> <p>12 Q. So wouldn't it be possible in the spirit of</p> <p>13 teamwork that she could do shorter depositions and you</p> <p>14 could do longer depositions?</p> <p>15 A. No.</p> <p>16 Q. That's not possible?</p> <p>17 A. No, not from start to finish on every file,</p> <p>18 no.</p> <p>19 Q. Okay.</p> <p>20 A. We tried that. I've also got files with</p> <p>21 Mr. Forster and other files in California, I've only</p> <p>22 got so much time. So no. That's why we wanted to</p> <p>23 have somebody who could manage the files from start to</p> <p>24 finish.</p> <p>25 Q. Okay. With respect to 15, it talks about the</p>

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<p>1 contentions with respect to defendant offering</p> <p>2 plaintiff to accommodate her doctors' prescribed work</p> <p>3 limitations related to her medical condition. I think</p> <p>4 we sort of touched on that.</p> <p>5 Would you have anything to add about ways in</p> <p>6 which you attempted to offer her accommodations to</p> <p>7 meet the work limitations by the doctors, or do you</p> <p>8 think we've covered all that?</p> <p>9 A. We've certainly touched on it. I don't want</p> <p>10 to be limited at some point in time in the future</p> <p>11 where you say you didn't respond to this question at</p> <p>12 this time with this specific fact.</p> <p>13 I think we have touched base on most of those</p> <p>14 things in my summary in particular, and we've touched</p> <p>15 on them throughout the e-mails. So nothing comes to</p> <p>16 mind as I'm reading this question I need to add as I</p> <p>17 sit here right now.</p> <p>18 Q. Well, I understand you can only testify about</p> <p>19 what you can think of and know right now, but I'm just</p> <p>20 asking you to do your best to think of anything that</p> <p>21 would be responsive.</p> <p>22 A. The question is overbroad if you are asking</p> <p>23 me to talk about multiple -- it's compound because you</p> <p>24 are asking me to talk about multiple conversations</p> <p>25 regarding a continuing interactive process. So, but,</p>	<p>1 touched on, possibly additional staff and all that, do</p> <p>2 you consider that to be an undue hardship as well?</p> <p>3 A. Which staff are you talking about?</p> <p>4 Q. If there was some support staff added or</p> <p>5 there was another associate working with the firm in</p> <p>6 the office.</p> <p>7 A. Well, I don't think that administrative staff</p> <p>8 are related at all to her performing of associate</p> <p>9 attorney functions. But yes, there would be at that</p> <p>10 time. We didn't have the funding for an additional</p> <p>11 person to come in and work full-time or we would have</p> <p>12 done it.</p> <p>13 So I can't just make somebody appear in terms</p> <p>14 of other associates. The question presumes that there</p> <p>15 were other people willing part-time to come in and fit</p> <p>16 that role. We didn't find any. I didn't do an</p> <p>17 exhaustive search. But we had a difficult time</p> <p>18 finding attorneys just in general on the start. But,</p> <p>19 yes, so that would be difficult to find that match and</p> <p>20 an undue hardship. What was the other one?</p> <p>21 Q. What steps did you take to try and find</p> <p>22 somebody else to come in and help out so that she</p> <p>23 would be able to stay on?</p> <p>24 A. On a part-time basis? I don't think we</p> <p>25 looked because I didn't see that as an appropriate</p>
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<p>1 yeah, I've given you the best information I have as</p> <p>2 I'm sitting here now in response to that general</p> <p>3 question.</p> <p>4 Q. Did anybody else at defendant talk with</p> <p>5 Ms. Buchanan about her doctors' restrictions and the</p> <p>6 firm's ability to accommodate it or possibly</p> <p>7 accommodate it?</p> <p>8 A. I can only speak to myself and what I know,</p> <p>9 and, no.</p> <p>10 Q. Okay. You don't know of anybody else at the</p> <p>11 firm who did that; right?</p> <p>12 A. I do not.</p> <p>13 Q. Okay.</p> <p>14 A. It was just her and me and Mr. Letofsky, so I</p> <p>15 don't think she ever went to him, and maybe</p> <p>16 Mr. Forster, she might have talked to him, but I don't</p> <p>17 recall any conversations with him on that issue.</p> <p>18 Q. Okay. So 16 speaks about undue hardship, and</p> <p>19 if I understand your testimony, you would consider it</p> <p>20 to be an undue hardship for Ms. Buchanan to only work</p> <p>21 four hours and not be able to do like longer ENEs or</p> <p>22 longer depositions as part of her job?</p> <p>23 A. It's not just that. It's the entire</p> <p>24 management of the file. But yes, that's correct.</p> <p>25 Q. Okay. So the other accommodations that she</p>	<p>1 fit.</p> <p>2 Q. All right. And so I'm clear, with respect to</p> <p>3 support staff, you don't think that having support</p> <p>4 staff would assist or help Ms. Buchanan to perform all</p> <p>5 of her work?</p> <p>6 A. No. You were talking about the essential</p> <p>7 tasks of the job. I don't think an administrative</p> <p>8 staff member helps with that.</p> <p>9 Q. Well, wouldn't an administrative or support</p> <p>10 staff person, paralegal, legal assistant, wouldn't</p> <p>11 that person be able to do some of the more clerical</p> <p>12 tasks that would free her up to do more of the</p> <p>13 attorney work?</p> <p>14 A. What do you mean by "clerical"?</p> <p>15 Q. Well, you know, it's like a paralegal can</p> <p>16 certainly pull cases off of Westlaw, Lexis, or some</p> <p>17 other database. They can certainly prepare the basics</p> <p>18 of forms, any oppositions to motions, I mean. You</p> <p>19 usually have stock set up, the standard of -- you know</p> <p>20 for denying a motion to dismiss.</p> <p>21 I mean, most people have standard or stock</p> <p>22 things that they use in terms of assembling the</p> <p>23 documents so that then she could come in and do the</p> <p>24 true legal work on it. You could have people in a</p> <p>25 system like that, couldn't you?</p>

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1 MR. ORTUNO: Objection. Compound. Vague.
 2 Calls for speculation.
 3 THE WITNESS: We didn't have stock motions to
 4 dismiss on the wide variety of employment law cases
 5 that we had. I would rather have the associate be the
 6 one doing the research or preparing the brief because
 7 they are the ones who understand the law and have to
 8 do the analysis. So I don't know of a stock motion,
 9 opposition to a motion to dismiss. It certainly
 10 wasn't available to us when we were first starting.
 11 So I don't see, as you have described it,
 12 that that's a fit to the overall limitations that
 13 Ms. Buchanan had to work under, but beyond that we
 14 didn't have the funding. I couldn't just go pay
 15 somebody.
 16 BY MR. KEMP:
 17 Q. In follow-up to that, let me ask you this:
 18 Do you employ paralegals, legal assistants, and
 19 secretaries in California?
 20 A. We have secretaries.
 21 Q. Okay. Do you have paralegals?
 22 A. We have people who are licensed as
 23 paralegals, but they don't really perform the
 24 traditional paralegal function that you are thinking
 25 of where they are performing form documents and

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1 things. Our practice isn't set up that way.
 2 Q. What do they do that --
 3 A. They might prepare shells on discovery or do
 4 the filing, putting things together in that respect.
 5 They do intake calls. So -- but they don't do the
 6 initial intake consultation.
 7 Q. Sure.
 8 A. So those types of functions are performed.
 9 Q. Okay. And when they do that type of work,
 10 doesn't it assist you because then you don't have to
 11 do that work, they are taking care of that part of it?
 12 A. Sure.
 13 Q. Any other ways in which any of the
 14 accommodations that Ms. Buchanan asked for would
 15 impose an undue hardship on the defendant, Watkins &
 16 Letofsky, LLP?
 17 A. Which accommodations did she request?
 18 Q. She requested the part-time hours, she
 19 requested to have support staff --
 20 A. She did request that. That would be an undue
 21 hardship. Sorry. The next one?
 22 Q. Well, I'm asking if there are any other --
 23 because I think you addressed that.
 24 I'm saying, aside from what we've already
 25 talked about, the accommodation of providing her with

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1 a part-time schedule, providing her with support staff
 2 or, you know, other, you know, assistance in doing
 3 some tasks, any other ways in which those would be an
 4 undue hardship other than we have talked about, is the
 5 question.
 6 A. Well, I think we've covered it. There's --
 7 yeah, I think we've covered it in those two.
 8 Q. 17, and there's probably not much to this.
 9 This is one of the statutory defenses to a disability
 10 discrimination case, and that's direct threat to
 11 health and safety of the plaintiff or others.
 12 Is there any way in which Ms. Buchanan,
 13 working in your workplace, would constitute a direct
 14 threat, to your understanding?
 15 A. No.
 16 Q. Number 18, I think you touched on this
 17 earlier. You did have a computer system that had
 18 remote access so that she could work from home or a
 19 remote location. That's the first part of the
 20 question. You did have that available; right?
 21 A. Correct. But your question when you say we
 22 talked about 18, I don't really know that I have a
 23 contention that she could only perform her job being
 24 physically present, so I don't want to assume that.
 25 Q. I'm sure that's the first part of it, I

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1 guess.
 2 A. And then the -- but, yes, she had remote
 3 access.
 4 Q. Okay. But you did testify before that
 5 because, especially when she first started, she was
 6 the only person, that you really wanted her to work
 7 from the office and be present --
 8 A. No, it wasn't based on the fact she was the
 9 only person. It was based on the fact that's the best
 10 place to do your job.
 11 Q. Okay. But remote access is made available to
 12 employees at your firm so they can work from remote
 13 locations like their homes?
 14 A. Only associates.
 15 Q. Okay. So 19 has got a lot of different
 16 subparts to it. The first one is, do you feel that
 17 Ms. Buchanan gave you proper notice that she would
 18 need a reasonable accommodation or otherwise give you
 19 enough information so you knew she was looking for a
 20 reasonable accommodation in her job?
 21 MR. ORTUNO: Objection. Compound. Calls for
 22 legal conclusions.
 23 THE WITNESS: I think -- I don't feel like we
 24 were ever caught off guard with the notice. I think
 25 we always had open communication on it.

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<p>1 BY MR. KEMP:</p> <p>2 Q. Okay. And part B, 19B, certainly she</p> <p>3 provided you with information that she had a physical</p> <p>4 condition that limited her activities; right?</p> <p>5 A. Yes, we knew there were certainly -- yes.</p> <p>6 Q. Okay. And you testified earlier that she</p> <p>7 certainly was a new attorney, she was green, but she</p> <p>8 had the requisite knowledge, experience, and training</p> <p>9 to perform the job that you hired her to do; is that</p> <p>10 right?</p> <p>11 A. She was a licensed attorney, which gave her</p> <p>12 access to perform the job. She needed to learn and</p> <p>13 gain experience and go through training to perform the</p> <p>14 job efficiently and manage files in the time allotted.</p> <p>15 I think that that was part of what was missing. But</p> <p>16 she certainly was licensed. I'm not suggesting that</p> <p>17 she wasn't an appropriate fit in that regard.</p> <p>18 Q. My understanding is that you all knew that</p> <p>19 going in, that there would be a certain amount of</p> <p>20 on-the-job training that would take place and that was</p> <p>21 part of this job; right?</p> <p>22 A. That's when we hired her. That's correct.</p> <p>23 Q. Okay. And do you feel in part -- I think</p> <p>24 part D we already talked about -- you didn't consider</p> <p>25 her to be a safety threat in the workplace?</p>	<p>1 A. No. Ms. Santos came in to fill the spot. In</p> <p>2 terms of what was going to happen in the future, I had</p> <p>3 no idea. We needed somebody to help on the files that</p> <p>4 were there. And whether we grew or didn't grow, that</p> <p>5 would remain to be seen.</p> <p>6 Q. So I guess my -- what I'm trying to ask and</p> <p>7 didn't ask very well, was Ms. Santos a replacement for</p> <p>8 Ms. Buchanan?</p> <p>9 A. Yeah. I mean, we needed an attorney and</p> <p>10 Ms. Buchanan wasn't working. So yes, I guess to that</p> <p>11 end she was. But we didn't -- when you say</p> <p>12 "replacement," it wasn't Santos in and Buchanan out.</p> <p>13 It was Santos in, Buchanan's figuring out what was</p> <p>14 going on, and we've got a life for the office and see</p> <p>15 where it goes.</p> <p>16 Q. And I think -- with respect to Ms. Santos</p> <p>17 under topic 22, how did you go about recruiting,</p> <p>18 hiring her? How did she come to you?</p> <p>19 A. I didn't research that. If it was in here, I</p> <p>20 missed it.</p> <p>21 Q. It's not crystal-clear, and I'm just asking</p> <p>22 you for your memory.</p> <p>23 A. Let me see if I can put it together. I</p> <p>24 always try to do word of mouth. I'm just trying to</p> <p>25 remember if she came to me by way of Mr. Sullivan or</p>
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<p>1 A. No, not at all.</p> <p>2 Q. And part E, 19E, I don't get a sense that you</p> <p>3 feel that she didn't participate in discussions or</p> <p>4 communications with you about her accommodations;</p> <p>5 right?</p> <p>6 A. I think she was open with where she was at</p> <p>7 and asked her what she wanted. So I agree that she</p> <p>8 did those things.</p> <p>9 Q. Okay. Good. Thanks.</p> <p>10 20 is the same way, you don't feel that she</p> <p>11 failed in any way to engage in an interactive process</p> <p>12 with you talking toward finding an accommodation, do</p> <p>13 you?</p> <p>14 A. No.</p> <p>15 Q. Okay. I think we already talked about 21 at</p> <p>16 the beginning in terms of policies and procedures,</p> <p>17 unless there is anything you would like to add about</p> <p>18 policies or procedures.</p> <p>19 A. No, I think the response for those questions</p> <p>20 would stand.</p> <p>21 Q. Okay. 22, was -- Ms. Theresa Santos, was she</p> <p>22 then a permanent replacement for Ms. Buchanan, or were</p> <p>23 you going to hire her as an addition anyway?</p> <p>24 A. "Hire her," Ms. Santos?</p> <p>25 Q. Yes. Sorry.</p>	<p>1 Cory Santos, her husband, and maybe I met him through</p> <p>2 Mr. Sullivan. Could have been Craig's List response,</p> <p>3 but that doesn't seem like it was. That doesn't seem</p> <p>4 to hit home. So I don't know. We just needed</p> <p>5 somebody and she was looking. So I apologize. I</p> <p>6 don't remember.</p> <p>7 Q. Okay. That's all right. It's not critical.</p> <p>8 A. Gosh, I should know that, but it just doesn't</p> <p>9 come back to my mind.</p> <p>10 Q. Okay. Nothing stands out. I get it.</p> <p>11 23 we covered. Nobody from the defendant</p> <p>12 that you know of had any interaction with</p> <p>13 Ms. Buchanan's healthcare providers?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. We're going -- these should go pretty</p> <p>16 quick too. In terms of -- and when I say "these," the</p> <p>17 next questions are going to be about affirmative</p> <p>18 defenses that are raised to the answer. We have a</p> <p>19 copy of the answer here if you need to refer to it at</p> <p>20 all. But -- yeah, I think it was number 3, Exhibit 3.</p> <p>21 MR. ORTUNO: Before we get on this, can I</p> <p>22 just get a running objection to all this line of</p> <p>23 questioning regarding the affirmative defenses that it</p> <p>24 calls for a legal conclusion, it goes to the very</p> <p>25 nature of the case?</p>

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<p>1 MR. KEMP: Right, well, and that's why I</p> <p>2 bolded and italicized. I'm going to ask about facts</p> <p>3 and circumstances.</p> <p>4 MR. ORTUNO: Okay. As long as you keep it</p> <p>5 there but just --</p> <p>6 MR. KEMP: Right. The interesting thing here</p> <p>7 is that Mr. Watkins is actually an attorney --</p> <p>8 MR. ORTUNO: The objection is still like -- I</p> <p>9 think it still holds, you know. If you will allow me</p> <p>10 the running objection, that way I don't have to</p> <p>11 interrupt you guys' flow.</p> <p>12 MR. KEMP: Of course, that will be fine.</p> <p>13 MR. ORTUNO: I understand he's a lawyer as</p> <p>14 well.</p> <p>15 MR. KEMP: In all cases people bring that up.</p> <p>16 That's why I emphasize that I'm going to ask about the</p> <p>17 facts that would support that.</p> <p>18 MR. ORTUNO: Understood, understood.</p> <p>19 BY MR. KEMP:</p> <p>20 Q. Okay. So -- and they don't actually go in</p> <p>21 direct order, so they jump around a little bit.</p> <p>22 A. Okay.</p> <p>23 Q. It's from my form, because these come up in</p> <p>24 almost all cases, and it depends on where you have it</p> <p>25 in your specific answers.</p>	<p>1 A. -- as I understand it. I haven't done that</p> <p>2 calculation.</p> <p>3 Q. All right.</p> <p>4 A. I think the filing dates of those documents</p> <p>5 would speak for themselves. It would be a question of</p> <p>6 what constitutes adverse employment actions.</p> <p>7 Q. Okay.</p> <p>8 MR. ORTUNO: See how it's hard to stay off</p> <p>9 the facts and circumstances?</p> <p>10 MR. KEMP: On that particular one.</p> <p>11 MR. ORTUNO: You have to apply the law to the</p> <p>12 facts and circumstances.</p> <p>13 MR. KEMP: That's more difficult than I</p> <p>14 think. I'm also leaning on him a little bit harder</p> <p>15 because I know he should be able to answer those</p> <p>16 things. I hear you, though, and I understand the</p> <p>17 objection.</p> <p>18 Q. So there's a breach of contract claim, breach</p> <p>19 of the implied covenant of good faith and fair</p> <p>20 dealing. Those would have at minimum a four-year</p> <p>21 statute of limitations.</p> <p>22 I understand there is no question that she</p> <p>23 filed this case within four years even of when she's</p> <p>24 been hired. It's been less than four years now since</p> <p>25 she was hired April 1st; right? So --</p>
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<p>1 So number 24 talks about the 30th affirmative</p> <p>2 defense, which is talking about the timeliness of the</p> <p>3 filing of the case in terms of statute of limitations.</p> <p>4 And I guess, is there some time by which you</p> <p>5 think Ms. Buchanan should have filed this case for any</p> <p>6 of her claims? And you can look at the claims too in</p> <p>7 Exhibit 2, which is the complaint, the amended</p> <p>8 complaint.</p> <p>9 I'm just trying to find out if there's a</p> <p>10 deadline by which you believe that it should have been</p> <p>11 filed.</p> <p>12 That's your standing objection.</p> <p>13 A. What's the charge exhibit number?</p> <p>14 Q. Exhibit 2 is the complaint. Exhibit 15 is</p> <p>15 the charge, if you are talking about the charge.</p> <p>16 A. I don't have the actual complaint to the EEOC</p> <p>17 or NERC.</p> <p>18 Q. Number 15 is --</p> <p>19 A. She had 300 days from the affirmative -- from</p> <p>20 the adverse employment action to file her complaint</p> <p>21 with NERC, and 90 days after the right-to-sue letter</p> <p>22 to file her complaint. And I haven't analyze those,</p> <p>23 but if those don't match, then we would reserve the</p> <p>24 right under the statute of limitations defense --</p> <p>25 Q. Okay.</p>	<p>1 A. But I think there is a significant question</p> <p>2 whether there is a contract --</p> <p>3 Q. Well, and --</p> <p>4 A. -- as a predicate for the statute of</p> <p>5 limitations to apply. So if somehow in that analysis</p> <p>6 we would work in the idea that there is no contract,</p> <p>7 that would be a factor or circumstance. I don't know</p> <p>8 how it plays out, but that would be my response.</p> <p>9 Q. I understand, and I know you have that as a</p> <p>10 defense, but in terms of a statute of limitations --</p> <p>11 A. You are correct it's four years on the</p> <p>12 breach, whatever the alleged breach would be.</p> <p>13 Q. Right. Okay. We have a statutory claim</p> <p>14 608.190 --</p> <p>15 A. Just to back it up, so to that end I would be</p> <p>16 speculating because I don't believe there's a contract</p> <p>17 and there is no breach that I'm aware of to apply the</p> <p>18 statute, but I think we agree on the law.</p> <p>19 Q. Okay. All right. I'm just looking to see if</p> <p>20 I really -- the rest of them, I don't think there's</p> <p>21 any -- I don't think there is any real question that</p> <p>22 the administrative charge and the filing of the --</p> <p>23 within the 90-day right to sue, so I think we're done</p> <p>24 with that topic.</p> <p>25 A. Okay.</p>

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1 Q. Because the other ones are much like the
2 contract one or something there's going to be -- okay.
3 So the next one line here is the fourth
4 affirmative defense, which is a failure to exhaust
5 administrative remedies.
6 MR. ORTUNO: I got to verbally object here
7 because I think any of this even to discuss the facts
8 requires a legal analysis that goes beyond just
9 discussing the facts.
10 THE WITNESS: I think my role here is --
11 MR. ORTUNO: Are we going to do a legal
12 argument? Should we pull out Westlaw?
13 MR. KEMP: Well, wait for my question.
14 THE WITNESS: I'm here as the PMK.
15 MR. KEMP: Wait for my question.
16 MR. ORTUNO: Okay.
17 BY MR. KEMP:
18 Q. Do you have any dispute that Ms. Buchanan did
19 go to the EEOC and Nevada Equal Rights Commission to
20 file a charge?
21 A. No.
22 Q. Do you have any dispute as to whether or not
23 the agency processed the charge?
24 A. No.
25 Q. Okay. I don't know if I'm going to have any

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1 questions on topic 26. I think on that particular one
2 we've sort of covered it. I mean -- all right. Let
3 me just ask this:
4 This is on -- you've got, on your 6th, 8th,
5 9th, and 10th affirmative defenses, they are basically
6 all talking about that you had legitimate
7 nondiscriminatory and non-retaliatory business reasons
8 for whatever took place with Ms. Buchanan.
9 Along those lines, is there anything -- you
10 know what? I don't think I can formulate a question
11 here that is not something that we've already talked
12 about and not something that we're not just going to
13 have a big argument about.
14 A. Okay.
15 Q. I'm going to just put an asterisk by that. I
16 may come back to that.
17 MR. ORTUNO: Okay. I'll be here.
18 BY MR. KEMP:
19 Q. Okay. 27 is talking about the 20th
20 affirmative defense with respect to failure to
21 mitigate damages.
22 Is there any way in which you think
23 Ms. Buchanan didn't go out and find replacement
24 employment or do something to earn a living that
25 would...

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1 A. I know of no facts that suggest, from May of
2 2017 until at least January 2018, that she engaged in
3 looking for employment part-time or otherwise other
4 than what she testified to at her deposition, and I
5 think most of that was at the end of 2017, beginning
6 of 2018.
7 So there would be a period of time where she
8 believed she could work four hours, and I don't
9 believe she did anything to really search for a job
10 until after probably December of 2017.
11 Q. Okay. And during that time frame, do you
12 have any knowledge -- when I say "you," I mean the
13 firm, does the firm have any knowledge of any
14 particular steps that she took to find work or didn't
15 take? I mean, do you have any knowledge that would be
16 relevant to that?
17 A. Well, that she didn't take steps would be the
18 knowledge we had during that time period.
19 Q. So the defendant's contention is that she
20 didn't do anything to look for work during that time?
21 A. That's my understanding.
22 Q. Okay. All right. So the 18th affirmative
23 defense was the after-acquired evidence doctrine.
24 Have you learned anything about acts or
25 omissions that Ms. Buchanan did or failed to do since

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1 the time that she's not been working with you? Have
2 you found anything that would have caused you to
3 terminate her employment had you known about it at the
4 time?
5 A. So can we do this on this question: Can we
6 back after-acquired evidence out of your question and
7 then ask it based on a fact, because there's a
8 plethora of cases describing the scope and effect of
9 after-acquired evidence and what that even means.
10 Q. Sure.
11 A. So --
12 Q. Let me rephrase the question.
13 My question is, have you learned anything
14 since the last time Ms. Buchanan worked for you, have
15 you learned anything that, had you known about it
16 while she was working for you, that would have led you
17 to terminate her employment?
18 A. With that one, no, I have not.
19 Q. Okay. Have you learned --
20 A. I'm sorry. Can I look at that answer real
21 quick? (Counsel examined reporter's computer screen.)
22 No, we're good.
23 Q. Since the last time Ms. Buchanan worked for
24 you, have you learned of anything that she did while
25 she was employed by your firm that you would have

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<p>1 considered to be misconduct?</p> <p>2 A. No, not in the sense that I think you mean</p> <p>3 it, no.</p> <p>4 Q. Like in any sense at all?</p> <p>5 A. No, the answer is no.</p> <p>6 Q. Okay. Have you learned of anything since</p> <p>7 Ms. Buchanan left the employment with your firm that</p> <p>8 you didn't know at the time that you now think has</p> <p>9 some impact on her entitlement to recover money from</p> <p>10 your firm?</p> <p>11 A. I don't know what you mean by "entitlement."</p> <p>12 Q. Well, she has a claim for money damages from</p> <p>13 your firm.</p> <p>14 A. Correct.</p> <p>15 Q. Have you learned anything since the time that</p> <p>16 she left the employment with your firm that you</p> <p>17 believe should result in her not being able to recover</p> <p>18 those damages that she's claimed here?</p> <p>19 MR. ORTUNO: I'm going to object on this</p> <p>20 again. It goes to the very heart of this lawsuit.</p> <p>21 That's what we're going to trial to determine.</p> <p>22 THE WITNESS: The answer is yes. I mean, all</p> <p>23 the discovery in the case, her deposition adds</p> <p>24 information. So it would be really, really hard to --</p> <p>25 there's a lot of information I have today that I</p>	<p>1 at-will employee. That would apply to the contract</p> <p>2 allegation. I knew that before, but not in the</p> <p>3 context of the allegation.</p> <p>4 I mean, that's just starting on the formation</p> <p>5 of the contract. I don't believe she's entitled to</p> <p>6 any damages even under a contract theory based on her</p> <p>7 testimony at her deposition. That would be added in,</p> <p>8 her responses to discovery, her initial disclosures.</p> <p>9 So the question is huge. There is every fact</p> <p>10 in the case plays into whether or not she's entitled</p> <p>11 to recover money under her claims that we couldn't</p> <p>12 even do it in an MSJ. There is still too much past</p> <p>13 that.</p> <p>14 Q. Okay.</p> <p>15 A. So I can't answer your question.</p> <p>16 Q. Number 29 talks about the second affirmative</p> <p>17 defense, which is a claim that the defendant -- the</p> <p>18 claims are -- against defendant are barred by the</p> <p>19 exclusive remedy provisions of the Nevada Industrial</p> <p>20 Insurance Act.</p> <p>21 A. We'll withdraw that affirmative defense.</p> <p>22 Q. Okay.</p> <p>23 A. That's not applicable.</p> <p>24 MR. ORTUNO: Okay. I'll take the blame for</p> <p>25 that.</p>
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<p>1 didn't have back when she was employed and since she</p> <p>2 left employment that impacts on her right to recover</p> <p>3 money in the lawsuit.</p> <p>4 BY MR. KEMP:</p> <p>5 Q. So these are things that you have learned</p> <p>6 from your discovery process in the case?</p> <p>7 A. Yes, yes.</p> <p>8 Q. All right. Would you share some examples</p> <p>9 with me?</p> <p>10 MR. ORTUNO: Objection.</p> <p>11 THE WITNESS: Examples of what?</p> <p>12 BY MR. KEMP:</p> <p>13 Q. Well, what are some of the examples that you</p> <p>14 think have had this impact that you have learned in</p> <p>15 discovery?</p> <p>16 A. With respect to what specific cause of action</p> <p>17 or claim? There is no contract, so the allegation was</p> <p>18 that there was a contract. I didn't know anything</p> <p>19 about that before while she was employed because there</p> <p>20 never was one. So there's an allegation. I'm</p> <p>21 learning about that for the first time from her</p> <p>22 perspective. And then I look at the evidence that</p> <p>23 doesn't support that. There are a hundred pages of</p> <p>24 e-mails that go back and forth that don't lay the</p> <p>25 foundation for an appropriate contract. She was an</p>	<p>1 MR. KEMP: Nobody is assigning any blame.</p> <p>2 Come on, now.</p> <p>3 THE WITNESS: Did you get that comment from</p> <p>4 opposing counsel, nobody is assigning any blame?</p> <p>5 MR. KEMP: With respect to the second</p> <p>6 affirmative defense, make sure you add that part.</p> <p>7 THE WITNESS: I just want to make sure I can</p> <p>8 pull it out when Joe starts screaming.</p> <p>9 BY MR. KEMP:</p> <p>10 Q. Okay. So topic 30 is the 24th affirmative</p> <p>11 defense, saying that plaintiff's employment has not</p> <p>12 been terminated, nor has been subjected to any adverse</p> <p>13 action with respect to the employment.</p> <p>14 I think we at least touched on it. I think</p> <p>15 we kind of covered it. Do you have anything else to</p> <p>16 say about the end of her employment? Her contention</p> <p>17 is that she was essentially terminated when you</p> <p>18 informed her that her insurance was being cancelled.</p> <p>19 Do you have any response to that contention</p> <p>20 by her that would go to this?</p> <p>21 A. Sure. She was an at-will employee. We had</p> <p>22 agreed to pay her insurance while she was on leave,</p> <p>23 which is something we've never done. And she was</p> <p>24 going to contribute to her insurance. She did not</p> <p>25 contribute to her insurance. We were paying the full</p>

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<p>1 amount while she was out not working with no estimated 2 date of return beyond the four-hour limit.</p> <p>3 And we had been talking -- I talked in the 4 August time frame, when it became clear that she 5 needed six more months and we weren't going to bring 6 her back in and we were paying for insurance and she 7 wasn't contributing, I talked to Susan Watkins about 8 we needed to bring the insurance to an end.</p> <p>9 We had some discussions in September, but we 10 never got her answer and so it came up again in 11 November. I believe, actually now that we are 12 talking, it was in conjunction with the E&O, and she 13 has her little ticklers. So it all came up again at 14 that time, and that's when there was no prospect of 15 her coming back and she hadn't contributed any portion 16 in five or six months, that we ended it.</p> <p>17 Q. What was the agreement with respect to 18 contributing? How did that come about? How was that 19 discussed? I haven't seen any e-mails about that.</p> <p>20 A. The agreement -- I don't know what you mean 21 by that. But as we talked about earlier, she went out 22 on an indefinite leave, and I believe right after 23 that, as part of that, Susan Watkins had cancelled her 24 insurance, because that's what we do when people 25 leave.</p>	<p>1 THE REPORTER: Eighteen. 2 (Exhibit 18 was marked for identification.)</p> <p>3 BY MR. KEMP: 4 Q. So 18 is an iMessage, a text message, 5 essentially, from September 1st, I believe this was 6 2017, 4:35 p.m. It's talking about the pay and the 7 insurance. It's on the second page of it it says, 8 "Regarding insurance, we're going to have to talk 9 about that," is one sentence right like in the middle 10 of the text on that page.</p> <p>11 A. Okay. 12 Q. So was it after this text message on 13 September 1st that you discussed her paying for part 14 of her insurance?</p> <p>15 A. No. I mean, this was after all of that 16 initial discussion.</p> <p>17 Q. Okay. 18 A. This is September. We talked about it in 19 May, May, June, I think. I have to look. There's a 20 sheet that has the reference to the first payments of 21 insurance. I don't think it took this long to get it 22 reinstated once it was cancelled. I think it was 23 reinstated pretty quickly.</p> <p>24 Q. Do you recall sending this text message to 25 Amy?</p>
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<p>1 And that -- Ms. Buchanan found out about 2 that, became very upset, and I talked to 3 Brian Letofsky and Susan, and we agreed to reinstate 4 it while she was out on leave, because we knew that 5 she needed the insurance and we wanted her to find a 6 way to get healthy if that was possible.</p> <p>7 As part of that we would continue the 8 insurance, but it would need to continue in accordance 9 with the previous arrangement. So we contributed X 10 amount and she was supposed to contribute X amount, 11 but that didn't happen, so we were footing the full 12 bill for, I think, if not all the time, everything but 13 one month or two.</p> <p>14 Q. So how was it communicated that she was going 15 to be footing the bill for part of it? I don't recall 16 seeing any communication about that.</p> <p>17 A. No. She called when she was cancelled and we 18 talked on the phone and said we'll reinstate it but we 19 would reinstate it as it was before, can't just take 20 care of all of your insurance, we've never done that. 21 I believe she contributed the first month and didn't 22 after, something to that effect. It's on the next 23 page you have there.</p> <p>24 MR. KEMP: Let me mark this as an exhibit so 25 we're on the same thing.</p>	<p>1 A. No, not particularly. 2 Q. Do you have any dispute or doubt that you 3 sent this text message to her?</p> <p>4 A. No, not as I'm looking at it here. I don't 5 know what text came in advance of that, but...</p> <p>6 Q. All right. I'm just going to read here. 7 It's not that long.</p> <p>8 A. What I don't understand from the page here is 9 it says "to Dan Watkins" and it says, "Amy, I just 10 spoke." So it doesn't -- I'm not sure --</p> <p>11 Q. Yeah, I don't know why -- 12 A. That's confusing to me, so I can't confirm 13 that this is a text that I sent based on that, but...</p> <p>14 Q. Just based on the fact that it says "to Dan 15 Watkins"?</p> <p>16 A. Yeah. It doesn't appear to be from me. 17 Q. Okay. Well, the next page, you can see where 18 there's an "okay, thank you." I think that might be 19 referring to that, where she responded.</p> <p>20 A. Okay. I mean, that's -- 21 Q. I don't know that for sure, but that's -- 22 A. You know as much as I do, apparently. If you 23 have questions, I can answer them about it.</p> <p>24 Q. Right. So I am going to read it. It says: 25 "Amy, I just spoke with Susan and she</p>

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<p>1 told me about the miscommunication regarding</p> <p>2 pay and insurance. Regarding the pay, we</p> <p>3 will go through the payroll records in detail</p> <p>4 this weekend and get you a check for the</p> <p>5 balance of the difference between the</p> <p>6 50 percent that you were paid and the</p> <p>7 percentage that you worked. We will make</p> <p>8 sure that you get -- we will make sure to get</p> <p>9 you paid for the time you worked. Regarding</p> <p>10 insurance, we're going to have to" -- and it</p> <p>11 picks up here in the middle (indicating) --</p> <p>12 "talk about that." Let me start with the --</p> <p>13 "regarding insurance, we're going to have to</p> <p>14 talk about that. I'm sure we can fix</p> <p>15 whatever problems exist. I cannot talk this</p> <p>16 evening, but I'm free tomorrow morning up to</p> <p>17 about 1:00 p.m. Please call me tomorrow at</p> <p>18 your convenience. Thank you, Dan."</p> <p>19 I sort of read that correctly, didn't I? Did</p> <p>20 I say anything that's not there?</p> <p>21 A. No, you read it.</p> <p>22 Q. So I don't see anywhere in here where you are</p> <p>23 talking about how she owes you money for the</p> <p>24 insurance. There is nothing like that in this</p> <p>25 particular text message, is there?</p>	<p>1 insurance or the pay?</p> <p>2 A. Yeah.</p> <p>3 Q. Do you recall any other conversations or</p> <p>4 communications with Amy about the insurance in</p> <p>5 particular?</p> <p>6 A. Other than this text message?</p> <p>7 Q. After this, yes.</p> <p>8 A. Oh, after? I couldn't place a date and a</p> <p>9 time to any conversation without something in writing.</p> <p>10 I can give you general ideas. I would assume we</p> <p>11 talked about it, but I don't recall it.</p> <p>12 Q. It would only be an assumption on your part.</p> <p>13 You don't have personal recollection of it. Correct?</p> <p>14 A. That is correct.</p> <p>15 Q. Okay.</p> <p>16 A. And I should say, with the caveat that</p> <p>17 potentially other documentation might refresh my</p> <p>18 memory that oh, yeah, we did talk. But as I sit here</p> <p>19 with this, I don't recall anything specific.</p> <p>20 Q. Okay.</p> <p>21 A. And I don't know what e-mails or whatever are</p> <p>22 out there that would refresh my memory off the top of</p> <p>23 my head. I'm just saying that could happen. I just</p> <p>24 want to leave that opening because --</p> <p>25 Q. Okay.</p>
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<p>1 A. Well, "we'll have to talk about it," so it</p> <p>2 doesn't say what you just said, but it certainly</p> <p>3 infers that there's things to talk about.</p> <p>4 Q. Okay. But my question is just about this</p> <p>5 document. It doesn't say anything about she owes you</p> <p>6 money for insurance, does it?</p> <p>7 A. When you say "say," I think that's vague.</p> <p>8 The words "you owe us money for insurance" are not in</p> <p>9 there.</p> <p>10 Q. Correct.</p> <p>11 A. But clearly we need to talk about the</p> <p>12 insurance situation, so it infers that there was</p> <p>13 something along those lines to talk about.</p> <p>14 Q. Okay. So did you talk with Amy about the</p> <p>15 insurance after this text message from September 1st</p> <p>16 at 4:35 p.m.?</p> <p>17 A. I do not know if we talked about it after or</p> <p>18 before. It would be extremely odd for me to just fire</p> <p>19 off this text without some precursor, some other</p> <p>20 information, something from Ms. Buchanan to stimulate</p> <p>21 the conversation. So I don't know if it was before or</p> <p>22 after.</p> <p>23 Q. At the end of it, you are asking her to "call</p> <p>24 you tomorrow to talk about it." Do you remember if</p> <p>25 she called you on September 2nd, 2017, to discuss the</p>	<p>1 A. -- there were a lot of communications with</p> <p>2 Ms. Buchanan over all of this time, and when one</p> <p>3 particular conversation occurred versus another I</p> <p>4 think would be very hard to say.</p> <p>5 MR. KEMP: Let's make this next.</p> <p>6 THE REPORTER: Nineteen.</p> <p>7 (Exhibit 19 was marked for identification.)</p> <p>8 MR. KEMP: Exhibit 19 is a two-page document.</p> <p>9 It's got defendant's Bates stamps 1291 and 1292.</p> <p>10 Q. These two pages, they were in sequence in the</p> <p>11 numbering of the Bates stamping. As I'm looking at</p> <p>12 them now, I think I might have grabbed the second</p> <p>13 page thinking it went with the first, but it doesn't</p> <p>14 because this is from a different date -- well, it's</p> <p>15 hard to say because we have the problem on the first</p> <p>16 page of again not having a sent line on that e-mail,</p> <p>17 so we don't specifically know what date that was sent</p> <p>18 or what time. So I think that might have been why I</p> <p>19 thought they were related. But when I look at the</p> <p>20 body of the e-mail on the first page, I don't think it</p> <p>21 can relate because it's from a later time period.</p> <p>22 But let's look at the one Friday, 22nd</p> <p>23 July 2016 from Amy Buchanan to Dan Watkins regarding</p> <p>24 health insurance. It says:</p> <p>25 "Hi, Dan. Per Jace, he can enroll me in</p>

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<p>1 health insurance at any time, effective on</p> <p>2 the 1st of the enrollment month, as long as</p> <p>3 it's approved by you and Brian."</p> <p>4 Okay. This is when she first gets insurance.</p> <p>5 This is part of the problem, the 2016 and 2017</p> <p>6 time frame, sometimes I get them confused in this</p> <p>7 case, and that might be why I included this.</p> <p>8 So this was just when she was just being</p> <p>9 enrolled in insurance?</p> <p>10 A. Correct.</p> <p>11 Q. Do you remember this e-mail at all?</p> <p>12 A. Oh, gosh, no. I do recall there was some</p> <p>13 issue about the timing of our insurance with her</p> <p>14 previous insurance, but I couldn't be specific on it.</p> <p>15 And that's why she was saying you can do it now,</p> <p>16 because when did she start? April? I think we have a</p> <p>17 60-day waiting period.</p> <p>18 Q. Right.</p> <p>19 A. Which would have put it in June. But I don't</p> <p>20 recall the specific e-mail. I think there was</p> <p>21 something that had to do with the timing to not</p> <p>22 interfere with the other insurance that she was on.</p> <p>23 Q. Okay. And then that just got stuck on there</p> <p>24 because I thought it might have been somehow related.</p> <p>25 A. For the clarity of the transcript, should we</p>	<p>1 Q. Okay. So this appears to be going on in</p> <p>2 November of 2017. I think I recall it was around</p> <p>3 November, the labor commissioner issue there, or she</p> <p>4 complained to the labor commissioner. Do you remember</p> <p>5 getting the complaint from the labor commissioner?</p> <p>6 A. Yes.</p> <p>7 Q. Do you think it was in November or was it</p> <p>8 October? When do you think you got it?</p> <p>9 A. That I don't know, but the response deadline</p> <p>10 is in November, so I'm assuming it was probably</p> <p>11 mid-Novemberish, somewhere in there.</p> <p>12 Q. Okay. I don't see anywhere in this e-mail</p> <p>13 where you are saying that she owes you money for</p> <p>14 health insurance either. It's not in this e-mail, is</p> <p>15 it?</p> <p>16 A. Not in this e-mail.</p> <p>17 Q. Okay. Did you ever send her any bills for a</p> <p>18 portion of the insurance?</p> <p>19 A. Not in the sense of an invoice, no.</p> <p>20 Q. Did you ever send any e-mails telling her how</p> <p>21 much she needed to pay?</p> <p>22 A. Yes -- well, not me personally, no. The</p> <p>23 business did, though.</p> <p>24 Q. Who do you think would have sent those</p> <p>25 e-mails?</p>
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<p>1 remove it?</p> <p>2 Q. We can just -- it could just be left there.</p> <p>3 MR. ORTUNO: I'll also note they have</p> <p>4 different subject lines, so they are probably</p> <p>5 obviously different time frames or different e-mail</p> <p>6 chains.</p> <p>7 MR. KEMP: I think when I was looking at them</p> <p>8 the sequence in the numbers is what threw me off.</p> <p>9 Okay. So we'll set the second page aside and</p> <p>10 we'll look at the first page.</p> <p>11 Q. Again, there is no sent line on here.</p> <p>12 However, this is talking about -- I'll just read it,</p> <p>13 the subject, "Health Insurance and Outstanding Wages."</p> <p>14 "Hello, Amy. We received the claim for</p> <p>15 wages. I will talk to Brian and we will</p> <p>16 address this no later than the response</p> <p>17 deadline of November 29th, 2017.</p> <p>18 "Also, please be advised that we have</p> <p>19 paid your health insurance through</p> <p>20 November 30th, 2017. We can no longer make</p> <p>21 payments for the insurance past this date.</p> <p>22 You will receive notice from the insurance</p> <p>23 company on your options. Thank you, Dan."</p> <p>24 Did I read that correctly?</p> <p>25 A. You did.</p>	<p>1 A. Well, they might have been copied by me and</p> <p>2 sent, but Susan would have put them together, Susan</p> <p>3 Watkins.</p> <p>4 Q. I just don't remember seeing them, so I just</p> <p>5 want to make sure I go looking for the right --</p> <p>6 A. Well, in one of the summaries I thought I saw</p> <p>7 in there.</p> <p>8 Q. In the --</p> <p>9 A. Isn't that our response, the next one?</p> <p>10 Q. Let me see. These are from July and</p> <p>11 September.</p> <p>12 A. Oh, September. Yeah, I'd have to look at</p> <p>13 those.</p> <p>14 Q. Okay. We'll --</p> <p>15 A. This e-mail does not say she owes money for</p> <p>16 insurance.</p> <p>17 Q. Right. You believe that there are e-mails</p> <p>18 that tell Amy she needs to pay part of the insurance?</p> <p>19 A. I believe that it was part of a summary that</p> <p>20 we prepared, but I don't think there was anything</p> <p>21 through the -- we didn't send a regular note saying</p> <p>22 this is the amount accumulated or anything like that.</p> <p>23 Q. The only thing I recall ever seeing it on was</p> <p>24 the response to the labor commissioner, which included</p> <p>25 a settlement offer, so I don't want to really get into</p>

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<p>1 that. But that's the only time I ever remember seeing</p> <p>2 something where you were claiming there was some</p> <p>3 offset for the cost of her insurance.</p> <p>4 A. I just want to strike "settlement offer" in</p> <p>5 your question, but if we can do that.</p> <p>6 Q. I'm just saying there was a settlement. I'm</p> <p>7 not saying what the --</p> <p>8 A. I just don't want this read back at trial.</p> <p>9 Q. I'm not -- well, there would be a motion in</p> <p>10 limine or whatever, but --</p> <p>11 A. Change the question, we don't have a problem,</p> <p>12 that's my point. I don't want to answer a question</p> <p>13 that says there's a settlement offer.</p> <p>14 Q. I'll rephrase the question.</p> <p>15 A. Thank you.</p> <p>16 Q. The response that was given to the labor</p> <p>17 commissioner to the complaint is the first and only</p> <p>18 time that I can recall seeing a reference made to Amy</p> <p>19 owing your firm money for part of the health</p> <p>20 insurance. Do you know of any other documents as you</p> <p>21 sit here --</p> <p>22 A. Where we sent something that says to her you</p> <p>23 owe us money?</p> <p>24 Q. Right.</p> <p>25 A. No.</p>	<p>1 claim for the wages, and yes, I guess she was.</p> <p>2 Q. So it says here that the firm had paid her</p> <p>3 health insurance through November 30th, 2017.</p> <p>4 A. Correct.</p> <p>5 Q. Was she an employee of the firm after</p> <p>6 November 30th, 2017? In other words, on December 1st</p> <p>7 of 2017, was she at that point no longer an employee?</p> <p>8 MR. ORTUNO: I'm going to object on the fact</p> <p>9 that a differentiation between what constitutes an</p> <p>10 employee is a question of law that needs to be --</p> <p>11 requires a legal analysis.</p> <p>12 THE WITNESS: I don't think anything changed</p> <p>13 in terms of her status as a result of not paying the</p> <p>14 health insurance.</p> <p>15 BY MR. KEMP:</p> <p>16 Q. Okay. So what notice was she going to</p> <p>17 receive from the insurance company about her options?</p> <p>18 A. I don't know. I understand COBRA sent --</p> <p>19 insurance companies notify them of COBRA, but I don't</p> <p>20 know the details.</p> <p>21 Q. COBRA only kicks in once somebody is no</p> <p>22 longer an employee; is that right?</p> <p>23 A. So that's why I said "your options." I don't</p> <p>24 know what they are or I don't know anything about</p> <p>25 COBRA. Never explored it. Don't know when it kicks</p>
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<p>1 Q. Okay. So as of the time that this e-mail</p> <p>2 would have been sent in the first page of Exhibit 19,</p> <p>3 by that point she was no longer an employee of your</p> <p>4 firm; is that correct?</p> <p>5 A. No.</p> <p>6 Q. She was still an employee?</p> <p>7 A. Well, she had sent the notice to us or the</p> <p>8 information in October -- excuse me -- August</p> <p>9 indicating six months under that scenario of</p> <p>10 four hours a day.</p> <p>11 Nothing changed between then and this,</p> <p>12 nothing changed going forward. I mean, she was still</p> <p>13 within the six-month window, I think, when all of this</p> <p>14 occurred.</p> <p>15 Q. Okay. So as of the time of this e-mail that</p> <p>16 you sent to her regarding the claim for wages sent to</p> <p>17 the labor commissioner, as of that time, how long had</p> <p>18 she no longer been an employee of your firm?</p> <p>19 A. Can you ask the question again? I lost you.</p> <p>20 Q. Sure. I'm just asking, at the time you sent</p> <p>21 her this e-mail -- let me back up and start over.</p> <p>22 As of the time you sent her this e-mail, was</p> <p>23 she still an employee of your firm?</p> <p>24 A. Yes. We were paying on her health insurance</p> <p>25 through that point and we were going to respond to her</p>	<p>1 in. And that's probably why I didn't use it there.</p> <p>2 Q. There's a state statute also that I think</p> <p>3 they call it a mini-COBRA that --</p> <p>4 A. I know there is Cal-COBRA in California, but</p> <p>5 I don't know anything about the operations of COBRA.</p> <p>6 That's why we have an insurance company, or a broker,</p> <p>7 I should say.</p> <p>8 Q. Okay. So I think, when we discussed this</p> <p>9 earlier, that you said pretty much when you got the</p> <p>10 wage claim from Amy through the labor commissioner,</p> <p>11 that certainly by that point she wasn't an employee</p> <p>12 anymore. Is your testimony different now?</p> <p>13 MR. ORTUNO: Objection. I believe that</p> <p>14 misstates the evidence.</p> <p>15 THE WITNESS: It does. I didn't use the word</p> <p>16 "certainly." I never terminated Ms. Buchanan. I</p> <p>17 never said, "You're not employed here anymore." It</p> <p>18 never happened. She came to us in August with an</p> <p>19 option that wasn't workable. She said she needed</p> <p>20 six months to let that play out.</p> <p>21 As I indicated earlier, the firm was growing,</p> <p>22 and depending on how things worked out with her</p> <p>23 medically and the firm's growth, I don't know what the</p> <p>24 options are in terms of her getting back and working</p> <p>25 day to day.</p>

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<p>1 I left it open. That's why we called it</p> <p>2 indefinite leave of absence. We paid her insurance to</p> <p>3 help her out and to be nice. There was no</p> <p>4 contribution. I can't just keep paying. I had no</p> <p>5 indication she was coming back any time soon,</p> <p>6 certainly not through January.</p> <p>7 So we couldn't keep paying that benefit when</p> <p>8 there was no production coming from her, but I never</p> <p>9 said you are not employed here, you are not welcome</p> <p>10 back when you get things worked out. That never</p> <p>11 happened. That discussion never even crossed my mind.</p> <p>12 BY MR. KEMP:</p> <p>13 Q. And any time between May of 2017 and today,</p> <p>14 did she ever tell you that she quit or give you a</p> <p>15 resignation letter?</p> <p>16 A. No.</p> <p>17 Q. Okay.</p> <p>18 A. She did not do that, to me, no.</p> <p>19 Q. To anybody at the firm that you --</p> <p>20 A. Or at the firm, no.</p> <p>21 Q. Okay. Was Ms. Buchanan's remote access and</p> <p>22 e-mail account turned off at some point?</p> <p>23 A. Yes.</p> <p>24 Q. When was that done?</p> <p>25 A. I don't know. That's when we realized she</p>	<p>1 like eight hours of work or something.</p> <p>2 Q. I thought that there was -- I thought part of</p> <p>3 her claim was that she had done eight hours of work on</p> <p>4 an independent contractor basis, but that was prior,</p> <p>5 after she had resigned in September of 2016.</p> <p>6 A. Could be. I mean, you are asking me</p> <p>7 questions about a two-year period of time with a lot</p> <p>8 of interaction. There are documents that would help</p> <p>9 me remember that. That time period after 2016 may</p> <p>10 have been when that occurred. She called it an</p> <p>11 independent contractor status. I really wasn't sure</p> <p>12 what it was. She wasn't supposed to be working and</p> <p>13 yet she was working. I don't remember it being</p> <p>14 September, because she resigned. It makes more sense</p> <p>15 to me as I'm sitting here that it was May, but it</p> <p>16 could have been. I don't know. But whatever it was,</p> <p>17 we paid her for that.</p> <p>18 Q. Okay. But that was the point in time when</p> <p>19 she was doing that work that you shut off her remote</p> <p>20 access and her e-mail?</p> <p>21 A. Whenever she was doing work when she wasn't</p> <p>22 supposed to be, yes.</p> <p>23 Q. Okay. Did she continue to be an employee</p> <p>24 after you shut off her remote access?</p> <p>25 A. Sure. She was off work for her medical</p>
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<p>1 was continuing to work when she was supposed to be on</p> <p>2 leave of absence, she was working hours she wasn't</p> <p>3 supposed to work. So we shut it off so she wouldn't</p> <p>4 continue to do that, because she wasn't supposed to be</p> <p>5 working.</p> <p>6 Q. Okay. Do you know what date that was,</p> <p>7 approximately?</p> <p>8 A. I don't, but we ended up paying her for, I</p> <p>9 think, the time that she worked remotely and finished</p> <p>10 some projects. So it would be reflected there, I</p> <p>11 believe, in the dates.</p> <p>12 Q. Okay. So --</p> <p>13 A. There was a time where she was no longer</p> <p>14 being paid salary because she wasn't working</p> <p>15 regularly, wasn't supposed to be, but continued to do</p> <p>16 work. So we shut it off so she wouldn't continue to</p> <p>17 send e-mails, do research, and perform work when she</p> <p>18 wasn't supposed to be.</p> <p>19 Q. So approximately when was that?</p> <p>20 A. Whatever -- I don't recall. Based on -- I</p> <p>21 know we did it for that reason, and my assumption</p> <p>22 would be it was after May of 2017.</p> <p>23 Q. Okay. What work was it that she did?</p> <p>24 A. I couldn't -- just followup projects, and it</p> <p>25 seems like there was a brief she worked on. It was</p>	<p>1 reasons to get better, so that was what she should</p> <p>2 have been focusing on.</p> <p>3 Q. Were you aware that when new associates</p> <p>4 starting -- I think it might have been Ms. Santos,</p> <p>5 that she -- that people in the firm were actually</p> <p>6 reaching out to her to get information about the</p> <p>7 cases, things that were going on?</p> <p>8 A. I heard that at Ms. Buchanan's deposition. I</p> <p>9 don't have independent knowledge of that. I wasn't</p> <p>10 involved in any of those communications.</p> <p>11 Q. Number 31, the prayer for relief basically</p> <p>12 says that defendant is going to claim an entitlement</p> <p>13 to be awarded its cost of defense, reasonable</p> <p>14 attorneys' fees.</p> <p>15 Your firm is defending this case in-house; is</p> <p>16 that right?</p> <p>17 A. We're defending it, yes.</p> <p>18 Q. You haven't spent any money on attorneys'</p> <p>19 fees for outside attorneys, have you?</p> <p>20 A. I disagree. Every second that an attorney is</p> <p>21 on this is money spent.</p> <p>22 Q. What I'm saying is, you haven't spent any</p> <p>23 cash money, you haven't sent any checks to other</p> <p>24 attorneys to represent you in this case?</p> <p>25 A. No outside firms; correct.</p>

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<p>1 Q. Okay. The 50th affirmative defense talked 2 about in number 32, this might be another one that I 3 don't think we really have a dispute over anymore, it 4 says the plaintiff never requested a reasonable 5 accommodation under the ADA. Maybe we do because it 6 says a "reasonable accommodation." Your contention, 7 as I understand it, is that her request for 8 accommodations were not reasonable. Is that right?</p> <p>9 A. No, not necessarily. We discovered that the 10 requested accommodation was not workable. I don't 11 know that it was unreasonable when it was made, but it 12 was -- we did soon learn that it created an undue 13 burden or hardship on the office and on Ms. Buchanan.</p> <p>14 Q. So she did request one, then, in terms of 15 maybe this defense --</p> <p>16 A. Yeah, I don't know how to read that defense. 17 I don't think it was unreasonable for her to request a 18 reduced schedule. That's not what we're saying there.</p> <p>19 I think that it became an undue hardship, 20 though, as the process went along. So I don't know 21 how to answer the question on the affirmative defense, 22 but those are the facts and circumstances around it.</p> <p>23 Q. Okay. I think your answer is that she 24 requested a reasonable accommodation but you found -- 25 MR. ORTUNO: Objection. Misstates the</p>	<p>1 to streamline the office, help with administrative 2 tasks and things of that nature. I don't ever 3 remember her saying a reasonable accommodation from my 4 medical provider would be to bring in a support staff 5 member; I don't remember that.</p> <p>6 Q. Oh, okay. So in order to be a reasonable 7 accommodation request, it would have to be something 8 that her doctors requested?</p> <p>9 A. No. The doctors' time limit was the 10 accommodation requested. I don't ever remember her 11 saying, I need as an accommodation a staff member to 12 assist me with performing essential job duties because 13 I have a disability. I don't remember that happening.</p> <p>14 We talked about administrative staff all the 15 time because we were trying to grow the office, but 16 never in the context of -- that I recall as an 17 accommodation to her disability.</p> <p>18 Q. Okay.</p> <p>19 A. I don't remember it ever coming up like that.</p> <p>20 Q. Okay. The fifth affirmative defense, I want 21 to take a look at it. It appears to be like a 22 personal injury type of thing almost.</p> <p>23 MR. ORTUNO: Fifth, you said?</p> <p>24 MR. KEMP: Yes, the fifth.</p> <p>25 Q. (Reading):</p>
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<p>1 testimony.</p> <p>2 THE WITNESS: Let him finish the question.</p> <p>3 BY MR. KEMP:</p> <p>4 Q. Did she request a reasonable accommodation 5 from you at any point?</p> <p>6 A. Yes, at some point, at one point, yes.</p> <p>7 Q. That makes this defense not --</p> <p>8 A. No, at one point she did. Remember she 9 requested accommodations across time many times. So 10 yes, at one point she did. When we were in August and 11 she was asking to go back to the same miserable 12 condition that she was working in before, for her, not 13 me, but for her, and the fact that she couldn't 14 complete the essential duties on a four-hour-day 15 schedule, then it wasn't reasonable.</p> <p>16 Q. Okay.</p> <p>17 A. We had tried that and we knew it wasn't. 18 Hence my question about why are you asking to go back 19 to that.</p> <p>20 Q. Okay. And in terms of her request to have 21 support staff help, was that a reasonable 22 accommodation request or unreasonable accommodation 23 request?</p> <p>24 A. I don't recall ever discussing support staff 25 as an accommodation. Support staff was discussed as</p>	<p>1 "Some or all of the plaintiff's claims 2 are barred because plaintiff did not exercise 3 ordinary care, caution or prudence for the 4 protection of her own safety and well-being, 5 and any injuries or damages allegedly 6 sustained or suffered by her were directly 7 and proximately caused or contributed to by 8 her default, failure to act, carelessness, 9 and negligence."</p> <p>10 Are you actually talking about physical 11 injuries?</p> <p>12 A. The first amended complaint?</p> <p>13 Q. The first amended complaint is number 2, 14 Exhibit 2. I mean, we certainly would have had a 15 claim for garden-variety emotional distress.</p> <p>16 A. Is there an emotional distress claim on which 17 some kind of comparative fault analysis could be 18 applied? I don't know. I mean, I know that she --</p> <p>19 Q. And the remedies sought under the ADA.</p> <p>20 A. Well, the breach of implied covenant of good 21 faith and fair dealing as well. I mean, honestly, 22 that's a really difficult question to answer. It 23 requires a pretty sophisticated legal analysis.</p> <p>24 Q. It just struck me as odd, it just struck me 25 as out of place, but -- and if you are talking about</p>

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<p>1 you wanted to apply it to a claim of emotional 2 distress, then it makes more sense. 3 A. I think that's where it's directed. 4 Q. Okay. That's fine. Go past that, then -- 5 well, I'm sorry. Just one question: 6 What is it that she did or didn't do that you 7 feel caused her own -- 8 A. I never asked her to work past the 9 restrictions. I think she might have testified to 10 that at her deposition. I just didn't. And to the 11 extent that she was driven and she worked hard and 12 wanted to do that, she did that on her own. And so I 13 wasn't compelling her or telling her to do that. 14 Certainly the work needed to be done, but I never said 15 you need to stay and risk your health. 16 On the contrary. We did a lot to try and 17 accommodate her in that, and I think her actions 18 across the board made clear or at least certainly 19 contradict the idea that I was yelling at her and 20 telling her she had to work late. 21 So to the extent that she came in with an 22 accommodation, we granted it and then she worked past 23 that. That would be something that she chose to do, 24 and we realized it wasn't workable because we went 25 even to 80 percent when she felt like she wanted to</p>	<p>1 Q. Okay. Do you believe that the information in 2 the labor commissioner response is accurate and 3 correct? 4 A. Yes. 5 Q. Okay. 46, regarding the 40th affirmative 6 defense: 7 "Plaintiff did not have a disability, 8 quote-unquote, as defined by the Americans 9 With Disabilities Act." 10 Is it your contention that she didn't have a 11 disability, she didn't have a condition that impacted 12 on her activities of daily living? 13 A. I believe that kind of contention in question 14 might not be appropriate in the depo setting, but at 15 this point, especially as a PMK, I don't know of any 16 information to suggest otherwise. I think she was 17 qualified as disabled. 18 Q. Okay. So there's a number of contract 19 defenses that are discussed here. I want to start 20 with the 44th affirmative defense, which is discussed 21 at topic 49, "no contract was ever formed between 22 plaintiff and defendant." And you've touched on that 23 before. 24 Is there any other -- any other facts or 25 information that you have to tell me about the lack of</p>
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<p>1 give it a try and work that, that wasn't workable and 2 she had an increase in the symptomatology and decided 3 that it wasn't workable and she had to stand back. 4 So I don't know how that all plays out, but 5 that's where that would be driven from. 6 Q. Okay. Jumping ahead to number 45, the 37th 7 affirmative defense -- 8 A. Can you hold on a second? I'm sorry. I'm 9 trying to respond to this (indicating cell phone), an 10 emergency on my depo tomorrow. 11 Q. Sure. Take your time. 12 Topic 45 is talking about the 37th 13 affirmative defense, which says: 14 "Defendant is entitled an offset for all 15 amounts advanced to plaintiff which she has 16 not repaid or amounts she otherwise owes." 17 We talked about the insurance. Is there 18 anything else that you claim that Ms. Buchanan 19 actually owes to your firm? 20 A. I don't believe so. 21 Q. And do you know how much -- I think it's set 22 forth in the labor commissioner response, but as you 23 sit here, do you remember how much it is that you 24 claim that she owes? 25 A. Not without looking at that, no.</p>	<p>1 contract formation that we haven't touched on already? 2 A. Yes. She was always an at-will employee. 3 Q. Okay. So your position is -- and I run into 4 the objection here, I know. But your position is that 5 at-will employment is not a contractual relationship? 6 A. Depends on what you mean by "contractual 7 relationship." Contractual relationship that implies 8 a set term would not be at-will employment, from my 9 understanding. 10 Q. Right, but it is a relationship that is 11 governed by the law of contract in terms of you agree 12 to pay her a certain amount of money, she agrees to 13 work a certain amount of time? 14 A. Am I disagreeing with your statement that it 15 is -- I don't believe that at-will employment supports 16 the bases for your cause of action that's bounded in 17 contract under the breach of implied covenant of good 18 faith and fair dealing. So I think we have a 19 disagreement there. 20 Q. I understand. 21 A. So I don't believe that there was a contract 22 ever formed that discussed a term of employment, nor 23 that set a term -- a pay scale for any term, anything 24 beyond an at-will scenario. 25 Q. All right.</p>

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<p>1 A. I mean, getting the facts, just because they</p> <p>2 are so wide-open questions, but there was an</p> <p>3 employment manual. She acknowledged at-will</p> <p>4 employment. She acknowledged receipt of the employee</p> <p>5 manual. That identifies multiple times throughout the</p> <p>6 manual that her -- that employment is at will and that</p> <p>7 no contract is formed based on the policies and</p> <p>8 procedures in the employee manual, and she</p> <p>9 acknowledged receipt of that and we have no documents</p> <p>10 to the contrary.</p> <p>11 Q. Okay. Anything else with respect to the</p> <p>12 formation?</p> <p>13 A. Not off the top, no.</p> <p>14 Q. Okay. So topic 51, the 46th affirmative</p> <p>15 defense:</p> <p>16 "Plaintiff's claims fail because</p> <p>17 plaintiff failed to return to work and</p> <p>18 abandoned her position."</p> <p>19 Is that how you contend that the employment</p> <p>20 relationship ended?</p> <p>21 A. Again, I think contention questions for pune</p> <p>22 (phonetic) care are not appropriate because they call</p> <p>23 for --</p> <p>24 THE REPORTER: Pardon?</p> <p>25 THE WITNESS: Contention question for pune</p>	<p>1 frauds, error, impracticability, waiver</p> <p>2 and/or release."</p> <p>3 And there's a whole bunch of stuff there.</p> <p>4 First of all, do you think that Amy Buchanan</p> <p>5 lied or misrepresented anything to you in this case?</p> <p>6 A. You mean during her employment?</p> <p>7 Q. Anything related to her employment when she</p> <p>8 was working for you through the end of when she was no</p> <p>9 longer working for you, did she --</p> <p>10 A. I'm just trying to get the time frame. Do I</p> <p>11 think she lied to us -- let me not use the word "lie"</p> <p>12 because I don't know -- that can have a lot of</p> <p>13 meanings. Do I think she misrepresented something to</p> <p>14 us during her employment?</p> <p>15 Q. Yes.</p> <p>16 A. No, I don't think so.</p> <p>17 Q. All right. With respect to her claims, do</p> <p>18 you think she's made misrepresentations about her</p> <p>19 claims other than --</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Other than what we've already talked</p> <p>22 about, is there anything -- I mean, I think you are</p> <p>23 saying that she says she's owed money that you think</p> <p>24 she is not owed.</p> <p>25 A. I don't want to be problematic, but that's</p>
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<p>1 (phonetic) care are not appropriate because they call</p> <p>2 for a legal conclusion, but to the extent that I can</p> <p>3 elaborate on the abandonment, it goes back to we had a</p> <p>4 conversation in August she was going to need</p> <p>5 six months, and she never got back to us.</p> <p>6 BY MR. KEMP:</p> <p>7 Q. Anything else regarding abandonment of her</p> <p>8 position, any other details?</p> <p>9 A. We talked about that one, unless you want to</p> <p>10 go back over that, that --</p> <p>11 Q. Anything that we haven't talked about</p> <p>12 already.</p> <p>13 A. Okay. Not that I can think of, no.</p> <p>14 Q. Okay. 52 I think we covered. 53 I'm going</p> <p>15 to come back to. 54 we've covered. 56, we've covered</p> <p>16 the facts, I think, pretty well. Only questions on 55</p> <p>17 at this point.</p> <p>18 47, topic 47 is talking about the 40 --</p> <p>19 actually, there was some -- I do this all the time, I</p> <p>20 have this problem -- 43rd affirmative defense, there</p> <p>21 were like two of them. So the first 43rd affirmative</p> <p>22 defense says:</p> <p>23 "Plaintiff's contractual claims fail by</p> <p>24 reason of misinterpretation, fraud,</p> <p>25 unconscionability, impossibility, statute of</p>	<p>1 very compound and really difficult to answer. She</p> <p>2 states in her first amended complaint that we were a</p> <p>3 qualified employer, when that's not true.</p> <p>4 Q. We're going to get to that, yeah.</p> <p>5 A. But that's what you are asking me now. So I</p> <p>6 don't want to necessarily have to go through the</p> <p>7 entire complaint. I mean, I can. Her deposition</p> <p>8 testimony is a few hundred pages. I would have to go</p> <p>9 through that to identify each misrepresentation that</p> <p>10 occurred during that. I don't have my notes from the</p> <p>11 deposition in front of me to refer to so -- and I</p> <p>12 don't have the transcript to review it.</p> <p>13 I think that there were certainly at a</p> <p>14 minimum misunderstandings by her, but I don't have an</p> <p>15 itemization for you right now.</p> <p>16 Q. Okay.</p> <p>17 A. As it relates to contractual claim, if we</p> <p>18 want to focus on contractual claims --</p> <p>19 Q. Well, that's what this talks about.</p> <p>20 A. Your question was claims.</p> <p>21 Q. It was. But as I look back at this, it does</p> <p>22 speak about contractual claims specifically.</p> <p>23 A. Right.</p> <p>24 Q. And I was just talking about</p> <p>25 misrepresentation and fraud at this point. There's</p>

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<p>1 other parts of that too. But just misrepresentation 2 or fraud, misrepresentations that she's -- 3 A. Well, any claim that she had an agreement 4 with us to work for a set period of time under a 5 certain pay structure is inaccurate and a 6 misrepresentation, if that occurred, to the extent 7 that she was always at will. 8 The -- to the extent that she has claimed 9 that she's entitled to health insurance as a part of 10 an employee on leave, I think that's a 11 misrepresentation of what we discussed, and I don't 12 think that's legally accurate. We gave her health 13 insurance to help her out when she was on leave. 14 The idea that she was entitled to a bonus at 15 any time during her employment is a misrepresentation. 16 The idea that we agreed to pay her an hourly 17 rate during her employment is a misrepresentation. 18 And any other fact that would suggest she was 19 not an exempt professional at-will employee, those 20 would be misrepresentations. 21 Q. Anything else you can think of? 22 A. No. 23 Q. Okay. Well, the last part -- I'm going to 24 skip over some of these other parts, but I do want to 25 ask about waiver and/or release.</p>	<p>1 A. On 1286, there appears to be one missing, 2 but -- 3 Q. Right. 4 A. -- to answer your question, I don't recognize 5 them but I'm assuming that they came from us. It's 6 with our disclosures, so I'm sure we produced them. I 7 know I've reviewed them. I just don't recognize them 8 off the top. 9 Q. Okay. So the July 10th, 2017, at 10:19 p.m. 10 e-mail from you to Amy on 1286 with a copy to Susan 11 indicates that you are going to review her time and 12 you would cover proportionate balance due if she 13 worked more than the 50 percent or 80 percent of the 14 time. You did make that representation to her, didn't 15 you? 16 A. Regarding billable time? Yes. 17 Q. Making up payment. 18 A. We were going -- yes, whatever balance was 19 due based on the review of billable time. 20 Q. All right. And you believe that you have 21 done that? 22 A. Yes. 23 Q. Okay. As you sit here today, you don't think 24 you owe any money to Amy for time that she worked? 25 A. No. She was an exempt salaried employee and</p>
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<p>1 Is there any document that you contend or 2 know of that she signed that would constitute a waiver 3 or release? 4 A. I can answer the release part, and that's no. 5 And then just to be honest with you, I've never done 6 an analysis on what constitutes a waiver, so I 7 couldn't answer that right now. 8 Q. Oh, fair enough. 9 A. But I think I have given you the facts, at 10 least in this context. 11 Q. Okay. 12 A. If it -- yeah. But -- yeah, I don't know of 13 anything on those two issues. 14 MR. KEMP: Okay. Let's make this the next 15 exhibit. 16 THE REPORTER: Twenty. 17 (Exhibit 20 was marked for identification.) 18 BY MR. KEMP: 19 Q. Pages -- it's defendant Bates stamped 1285, 20 1286. So these e-mails -- you know what? There might 21 have been one -- there might have been another one on 22 1287 that I haven't included here, because it looks 23 like there's an e-mail from Amy to you at the bottom 24 of the page, "Payroll Correction." 25 Do you recognize these e-mails?</p>	<p>1 we paid her as such. 2 Q. Now, you said something a few minutes ago 3 about that there was never any agreement about an 4 hourly rate, yet we have an e-mail from Susan here 5 from September 1st, 2017, that indicates that time was 6 being paid at 31.25 an hour. 7 A. This is, I believe, for the time over that 8 she was paid when she wasn't being paid under a salary 9 wage. The only way to come up with it was to 10 establish an hourly rate to reimburse her for that 11 time. But there was no agreement that she would work 12 for us under an hourly rate, if my memory serves. 13 Q. So 65,000 a year divided by 2,080 hours would 14 be an eight-hour day of work hours, and that's how she 15 came up with 31.25; is that correct? 16 A. Yes. 17 Q. And so your position, as I understand it, is 18 that she was to be paid on a salaried basis for 19 part-time work? 20 A. Yes. 21 Q. Okay. And it was to be 20 hours a week 22 part-time when it was 50 percent and then went to 23 80 percent was eight hours times four days a week, 24 32 hours. Is that what it would work out to? Don't 25 trust my math, bu --</p>

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<p>1 A. It was 80 percent of a 40-hour workweek, so 2 whatever that translates to, yes.</p> <p>3 Q. Okay. 50 percent of a 40-hour workweek and 4 then 80 percent of a 40-hour workweek, okay, all 5 right, and I think it's 32 hours, but we won't trust 6 my math either. We'll get a calculator at some point.</p> <p>7 Okay. So this e-mail on September 1st, 2017, 8 basically a check was mailed out to Amy for \$1,338.59 9 for the supplemental earnings that were calculated, 10 and you believe that that was the last money that Amy 11 was owed; is that fair to say?</p> <p>12 A. Oh, I don't know.</p> <p>13 Q. Okay.</p> <p>14 A. Did you say owed or paid?</p> <p>15 Q. Well --</p> <p>16 A. Let's see. When was this sent out? 17 September 2017.</p> <p>18 Q. Yeah. So she had not been working since 19 May by that point.</p> <p>20 A. Yeah, I just don't know. I would assume 21 that's right, but I don't know.</p> <p>22 Q. All right. 48, which is the second 43rd 23 affirmative defenses, "Plaintiff's claims failed 24 because she was in breach of contract." 25 Clearly, you can plead things in the</p>	<p>1 Q. Okay. I'm sorry. I'm jumping around a 2 little bit here.</p> <p>3 44, which is the 36th affirmative defense, 4 "Plaintiff's claim is barred because there was no 5 meeting of the minds; therefore, no contract was 6 formed with defendant."</p> <p>7 I guess that might just be a different way of 8 the other one that says there was no contract?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. 42, which is the 25th affirmative 11 defense, "Plaintiff's symptoms of mental or emotional 12 distress or injury were the result of a preexisting 13 disorder or alternative cause and not the result of 14 any act or omission of the defendant."</p> <p>15 Do you know of any preexisting condition of 16 emotional or mental distress that Amy Buchanan had? 17 A. Her entire medical condition.</p> <p>18 Q. Okay. So you think because of her -- any 19 emotional distress or mental anguish that she had was 20 because of her medical conditions rather than anything 21 that the defendant did?</p> <p>22 A. The claimed distress and -- mental and 23 emotional distress in this lawsuit, yes.</p> <p>24 Q. Okay.</p> <p>25 A. There's no parceling out the difference</p>
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<p>1 alternative and things that are inconsistent, but in 2 what way do you feel that Amy was not living up to 3 whatever agreement or promises that she made?</p> <p>4 A. Since we don't -- I don't think there was a 5 contract, I think she could not be in breach. I don't 6 know of any facts to show that she breached a contract 7 that didn't exist.</p> <p>8 Q. Okay.</p> <p>9 A. I think we reserved those things for if the 10 trier of fact were to conclude that there was a 11 contract, there might be facts and circumstances that 12 are borne out by the trial process that establish she 13 was in breach.</p> <p>14 Q. As you sit here today, do you know what any 15 of those would be?</p> <p>16 A. I don't know the terms of the contract as 17 argued and proved at trial, so, no.</p> <p>18 Q. Okay. Number 50, plaintiff's -- which is the 19 45th affirmative defense, "Plaintiff's claims fail 20 because defendant performed all contractual 21 obligations in full and did so in good faith." 22 Is your answer the same for that, that you 23 just basically reserve that in case there's a contract 24 found? 25 A. Correct.</p>	<p>1 between the frustration and emotional distress 2 associated with trying to work and have those 3 conditions and what she experienced later on, that I 4 can discern.</p> <p>5 Q. What evidence do you rely on for that?</p> <p>6 A. Just her own testimony.</p> <p>7 Q. Nothing but her own testimony?</p> <p>8 A. Yeah. I mean, I don't have any other 9 information other than what she testified to at her 10 deposition, in terms of how she was handling things 11 from the transition or during the transition.</p> <p>12 Q. Okay. Just to be clear, you don't have any 13 medical evidence or doctors' opinions that say that; 14 right?</p> <p>15 A. No. I don't think it's required for that 16 particular affirmative defense either.</p> <p>17 Q. It might not be, but I'm just making sure 18 that there is nothing I'm missing.</p> <p>19 A. Yeah. We haven't had a medical analysis 20 done.</p> <p>21 Q. Okay. Number 39, going back, it's the 16th 22 affirmative defense, "Defendants claim that 23 plaintiff's claims fail because plaintiff paid -- it 24 should say "was paid all wages due and owed." 25 So as you sit here, you don't believe there</p>

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<p>1 is anything outstanding that Amy Buchanan is owed in 2 terms of wages? 3 A. Correct. 4 Q. Let me see if I've got the other documents 5 that we haven't looked at. 6 A. While you are doing that, can we take a 7 two-minute break, go to the restroom, and get some air 8 circulating in here? 9 (Recess taken.) 10 MR. KEMP: Back on the record. 11 Q. You are still under oath. Okay? 12 A. Yes. 13 Q. All right. Exhibit 20, the first e-mail on 14 1285 says: 15 "Dan, I just realized that this went to 16 her e-mail at WL-LLP. Please forward her 17 e-mail address and phone number, SW." 18 So this is from Susan to you. 19 That was a problem because she no longer had 20 e-mail access at the firm by September 1st, 2017; 21 right? 22 A. I would assume, yeah -- 23 Q. Okay. 24 A. -- yes, that was the in place at that time. 25 MR. KEMP: Okay. We'll make this the next.</p>	<p>1 with -- 2 A. She was an exempt professional employee not 3 entitled to overtime, is one or the primary. 4 Q. So when you say "not entitled," you mean not 5 entitled to overtime premium of time and a half; 6 right? 7 A. Well, any type of overtime payment, but yes. 8 Q. Okay. 9 A. She was salaried. I see the work performed, 10 September 2016. That line that goes over and says 11 "contract work," that's a misrepresentation in the 12 sense of what it was or wasn't. We didn't have a 13 contract for her to perform that work. 14 Q. Okay. And -- 15 A. I'm just looking. There's a lot of entries 16 on here. I don't know that I can dispute here in 17 front of me the time entries, but I don't think we 18 made that an issue and we ended up paying those. 19 Q. Okay. 20 A. Don't reference cases. I think that was a 21 concern, question we had, but... 22 Q. On the second page there's a thing on the 23 bonus -- I don't mean to interrupt you. I'm sorry. 24 A. That's fine. Oh, yeah, that -- the bonus is 25 wrong in two regards on the 150 and on the hours</p>
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<p>1 THE REPORTER: Twenty one. 2 (Exhibit 21 was marked for identification.) 3 MR. KEMP: Exhibit 21, some e-mails, Bates 4 stamp numbers 1304 and 1305, this is from the 5 July 2017 time frame. It says Saturday, 8 July 2017 6 from Amy Buchanan to Dan Watkins, with a CC to Susan 7 Watkins, subject "Payroll Correction." 8 Q. My understanding is that this is Amy's 9 summary of what she contended that she was still owed 10 at that time. Do you recognize that e-mail? Is that 11 what it says here? 12 A. Yes, I do. 13 Q. Do you remember getting this e-mail? 14 A. No, I don't remember receiving it, but I 15 recognize it. 16 Q. All right. You don't have any doubt as to 17 its authenticity, do you, in terms of -- 18 A. That it came from Ms. Buchanan, no. 19 Q. Okay. I know you probably dispute the 20 content of it, but is that -- as you look at it -- 21 A. Yes. 22 Q. -- you do have disputes with the content of 23 it; right? 24 A. Yes. 25 Q. And what was some of the issues that you have</p>	<p>1 calculated to reach it, as I remember. 2 As I remember, it's wrong on the 150. It's 3 definitely wrong to say that the bonus kicked in on a 4 monthly basis at any hourly rate, because it was not 5 monthly, ever, by anybody. 6 "Medical," I'm not sure what she's referring 7 to there. "127.29 per month paid," I'm not sure what 8 she's referencing there, so I don't know to dispute it 9 or not. 10 Q. Okay. All right. That's fine. All right. 11 So, finally, we come to topic number 53, 12 "Defendant is not an employer, quote-unquote, as 13 defined in the Americans With Disabilities Act 14 NRS 613.310," and that's from the 49th affirmative 15 defense? 16 My understanding is that the contention is 17 that you all don't have enough employees to be an 18 employer under the Federal Americans With Disabilities 19 Act or the State statute that deals with employment 20 discrimination on the basis of disabilities. Do I 21 have that right? 22 A. I'm not a qualified employer with that 23 specific issue in mind and perhaps others, but 24 certainly with respect to that. 25 Q. All right. And can you explain why that is?</p>

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<p>1 A. Well, we've only been -- the most we've ever</p> <p>2 had employed in Nevada is three people at any given</p> <p>3 time. This defendant, Watkins & Letofsky, LLP, A</p> <p>4 Nevada Limited Liability Partnership, had one employee</p> <p>5 with Ms. Buchanan, then two while she worked with</p> <p>6 Mr. Forster, then one while Mr. Forster worked alone</p> <p>7 until Ms. Santos worked, that made two, and then</p> <p>8 Ms. Kachermeyer started up; that's three -- actually,</p> <p>9 let me add in Mr. Ortuno; that makes four, but that</p> <p>10 was after Ms. Buchanan's employment.</p> <p>11 Q. Okay. And so then your position is that the</p> <p>12 California employees don't count at all?</p> <p>13 A. Correct. But even if they do, there's not</p> <p>14 15, there never has been. I don't believe they are</p> <p>15 included.</p> <p>16 Q. Okay. Well, I think we have some written</p> <p>17 discovery requests that would be relevant to that, but</p> <p>18 just how many employees do you believe that you had</p> <p>19 between California and Nevada during the time that</p> <p>20 Ms. Buchanan was employed, I guess, let me say between</p> <p>21 April of 2016 and November -- let's say December 1st</p> <p>22 of 2017; how many employees do you believe you had</p> <p>23 during that time between the two states?</p> <p>24 A. It fluctuated quite a bit, but anywhere from</p> <p>25 9 to 13, maybe 8 at one point between the two, but 9</p>	<p>1 that were saying that they didn't feel that they were</p> <p>2 being paid correctly?</p> <p>3 A. No.</p> <p>4 Q. I think I remember seeing somewhere that</p> <p>5 there was a reference in an e-mail that you said that</p> <p>6 you were reviewing the records, billable hours, and</p> <p>7 other records of other -- of other associates to</p> <p>8 determine whether they were paid correctly. I'm just</p> <p>9 wondering --</p> <p>10 A. No, that's inaccurate. I didn't review that,</p> <p>11 review those -- I didn't review billing for the</p> <p>12 purposes of determining correct wages. Everybody was</p> <p>13 on salary.</p> <p>14 MR. KEMP: Okay. All right. Those are all</p> <p>15 the questions I have. Thanks.</p> <p>16 MR. ORTUNO: I've got none.</p> <p>17 (End of proceedings at 5:24 p.m.)</p> <p>18</p> <p>19 * * * * *</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 to 13.</p> <p>2 Q. All right. We've got some written discovery</p> <p>3 requests out there. I'll look at the responses of</p> <p>4 that, but I just wanted to know from your testimony</p> <p>5 today what you think it is.</p> <p>6 A. Sure.</p> <p>7 MR. KEMP: Okay. All right. Give me just</p> <p>8 one minute to confer, because I think we're all done.</p> <p>9 Off the record.</p> <p>10 (Off record.)</p> <p>11 MR. KEMP: Let's go back on the record.</p> <p>12 Q. I would remind you are still under oath,</p> <p>13 okay?</p> <p>14 A. Yes.</p> <p>15 Q. In your calculation of the number of</p> <p>16 employees, do you count yourself and Mr. Letofsky?</p> <p>17 A. No, we do not.</p> <p>18 Q. Okay. If you did include yourself and</p> <p>19 Mr. Letofsky, would that 13 then be 15?</p> <p>20 A. Yes, but not for the period of time required</p> <p>21 under the ADA.</p> <p>22 Q. All right. Well, I understand your position,</p> <p>23 and we'll look at that as it comes up.</p> <p>24 The only other thing, I think there was</p> <p>25 something at some point, were there other associates</p>	<p>1 DECLARATION OF DEPONENT</p> <p>2 PAGE LINE CHANGE REASON</p> <p>3 _____</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 I, DANIEL R. WATKINS, ESQ., deponent herein,</p> <p>20 do hereby certify and declare under penalty of perjury</p> <p>21 the within and foregoing transcription to be my</p> <p>22 deposition in said action; that I have read, corrected</p> <p>23 and do hereby affix my signature to said deposition.</p> <p>24 _____</p> <p>25 DANIEL R. WATKINS, ESQ., Deponent</p> <p>Date: _____</p>

1 I, the undersigned, a Certified Court
2 Reporter of the State of Nevada, Registered
3 Professional Reporter, and Certified Realtime
4 Reporter, do hereby certify:

5 That the foregoing proceedings were taken
6 before me at the time and place herein set forth; that
7 any witnesses in the foregoing proceedings, prior to
8 testifying, were duly sworn; that a record of the
9 proceedings was made by me using machine shorthand
10 which was thereafter transcribed under my direction;
11 that the foregoing transcript is a true record of the
12 testimony given.

13 Further, that before completion of the
14 proceedings, review of the transcript was requested.

15 I further certify I am neither financially
16 interested in the action nor a relative or employee
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date
19 subscribed my name.

20 Dated: 03-02-2020

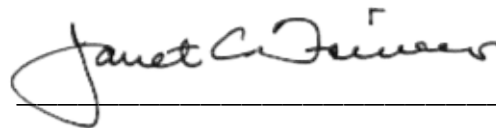
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JANET C. TRIMMER, RPR, CRR
NV CCR No. 864

